

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 29	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2020 - * 076	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 *).

A proposal to harmonize Exchange Rules 1015, 9261, 9524 and 9830 with recent changes by the Financial Industry Regulatory Authority, Inc.

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 * Olumuyiwa Last Name * Odeniyide

Title * Enforcement Counsel

E-mail * Olumuyiwa.Odeniyide@nasdaq.com

Telephone * (301) 590-6852 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 11/05/2020

By John Zecca

EVP and Chief Legal Counsel

john.zecca@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

Add Remove View

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

Add Remove View

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 harmonize Exchange Rules 1015, 9261, 9524 and 9830 with recent changes by the Financial Industry Regulatory Authority, Inc. (“FINRA”). These amendments would temporarily grant the Exchange’s Office of Hearing Officers (“OHO”) and the Exchange Review Council (“ERC”) authority³ to conduct hearings in connection with appeals of Membership Application Program decisions, disciplinary actions, eligibility proceedings and temporary and permanent cease and desist orders by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing. As proposed, these temporary amendments would be in effect through December 31, 2020.⁴

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ For OHO hearings under Exchange Rules 9261 and 9830, the proposed rule change temporarily grants authority to the Chief or Deputy Chief Hearing Officer to order that a hearing be conducted by video conference. For ERC hearings under Exchange Rules 1015 and 9524, this temporary authority is granted to the ERC or relevant Subcommittee.

⁴ If the Exchange requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2020, the Exchange may submit a separate rule filing to extend the expiration date of the temporary amendments under these rules. The amended Exchange rules will revert back to their current state at the conclusion of the temporary relief period and any extension thereof.

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 25, 2019. 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.

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

Olumuyiwa Odeniyide
Enforcement Counsel
Nasdaq, Inc.
301-590-6852

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

a. Purpose

The Exchange proposes to harmonize Exchange Rules 1015, 9261, 9524 and 9830 with recent changes by FINRA to its Rules 1015, 9261, 9524 and 9830 in order to temporarily grant OHO and the ERC authority to conduct hearings in connection with appeals of Membership Application Program decisions, disciplinary actions, eligibility proceedings and temporary and permanent cease and desist orders by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing. As proposed, these temporary amendments would be in effect through December 31, 2020.

Background

The Exchange's rules regarding hearing and evidentiary processes as set forth in Rules 1015, 9261, 9524 and 9830 model FINRA rules. As adopted, the text of Exchange Rule 1015 is substantially the same as FINRA Rule 1015, excepting additional provisions for Ex Parte Communications, Recusal or Disqualification, and conforming and technical differences. Similarly, the text of Exchange Rules 9261, 9524 and 9830 are substantially the same as FINRA Rules 9261, 9524 and 9830, except for conforming and technical differences.

In view of the ongoing spread of COVID-19 and its effect on FINRA's adjudicatory functions nationwide, FINRA recently filed a temporary rule change to grant FINRA's Office of Hearing Officers ("OHO") and the National Adjudicatory Council ("NAC") the authority to conduct certain hearings by video conference, if warranted by the current COVID-19-related public health risks posed by in-person hearings.⁵ Accordingly, the Exchange proposes to file this temporary rule change to align with FINRA.

A. OHO Hearings

FINRA represented in its filing that its protocol for conducting hearings by video conference would ensure that such hearings maintain fair process for the parties by, among other things, FINRA's use of a high quality, secure and user-friendly video conferencing service and provide thorough instructions, training and technical support to all hearing participants.⁶ According to FINRA, the proposed changes were a reasonable

⁵ See Securities Exchange Act Release Nos. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR-FINRA-2020-027) ("FINRA Filing").

⁶ See FINRA Filing, 85 FR at 55713.

interim solution to allow FINRA’s critical adjudicatory processes to continue to function while protecting the health and safety of hearing participants as FINRA works towards resuming in-person hearings in a manner that is compliant with the current guidance of public health authorities.⁷

Pursuant to a regulatory services agreement (“RSA”) between the Exchange and FINRA, FINRA’s Office of Hearing Officers administers all aspects of adjudications, including assigning hearing officers to serve as Exchange hearing officers. A hearing officer from OHO, among other things, presides over the disciplinary hearing, selects and chairs the hearing panel, and prepares and issues written decisions. The Chief or Deputy Hearing Officer for all Exchange disciplinary hearings are currently drawn from OHO and are all FINRA employees. The Exchange believes that OHO will utilize the same video conference protocol and processes for Exchange matters under the RSA as it proposes for FINRA matters.

Given that FINRA and its Office of Hearing Officers administers disciplinary hearings on the Exchange’s behalf, and given that the public health concerns addressed by FINRA’s amendments apply equally to the Exchange’s disciplinary hearings, the Exchange proposes to temporarily amend its disciplinary rules to allow FINRA, pursuant to the RSA, to conduct virtual hearings on its behalf.

B. ERC Hearings

Mirroring FINRA’s National Adjudicatory Council, the ERC is the Exchange’s appellate body, which reviews initial decisions issued by OHO and – through Subcommittees – holds evidentiary hearings for Membership Application Program

⁷ See id.

decision appeals and eligibility proceedings under Exchange Rules 1015 or 9524. As with OHO hearings discussed above, this temporary proposed rule change will allow the ERC or relevant Subcommittee to make an assessment as to whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference.

Proposed Rule Change

Consistent with FINRA's temporary amendment to FINRA Rules 1015, 9261, 9524 and 9830, the Exchange proposes to temporarily grant OHO and the ERC authority to conduct hearings in connection with appeals of Membership Application Program decisions, disciplinary actions, eligibility proceedings and temporary and permanent cease and desist orders by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing. The proposed change will permit OHO and ERC to make an assessment, based on critical COVID-19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted, FINRA has adopted a detailed and thorough protocol to ensure that hearings conducted by video conference will maintain fair process for the parties.⁸ The Exchange believes that this is a reasonable procedure to follow in hearings under Rules 1015, 9261, 9524 and 9830.⁹

⁸ See FINRA Filing, 85 FR at 55713.

⁹ The Exchange notes, as did FINRA, that SEC's Rules of Practice pertaining to temporary cease-and-desist orders provide that parties and witnesses may participate by telephone or, in the Commission's discretion, through the use of alternative technologies that allow remote access, such as a video link. See SEC Rule of Practice 511(d)(3); Comment (d); see FINRA Filing, 85 FR at 55714, n. 21.

To effectuate these changes, the Exchange proposes to add the following sentence to Rule 1015(f):

Upon consideration of the current public health risks presented by an in-person hearing, the Exchange Review Council or Subcommittee may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

The proposed text is substantially the same as the language adopted by FINRA, excepting conforming and technical differences.¹⁰

Similarly, the Exchange proposes to add the following sentence to Rule 9261(b):

Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

The proposed text is identical to the language adopted by FINRA.¹¹

Similarly, the Exchange proposes to add the following sentence to Rule 9524(a):

Upon consideration of the current public health risks presented by an in-person hearing, the Exchange Review Council or Review Subcommittee may, on a

¹⁰ See FINRA Filing, 85 FR at 55712.

¹¹ Id.

temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

The proposed text is substantially the same as the language adopted by FINRA, excepting conforming and technical differences.¹²

Similarly, the Exchange proposes to add the following sentence to Rule 9830(a):

Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

The proposed text is identical to the language adopted by FINRA.¹³

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing greater harmonization between the Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance.

¹² Id.

¹³ Id.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

As previously noted, with certain exceptions, the text of Exchange Rules 1015, 9261, 9524 and 9830 are substantially the same as FINRA's rules. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed temporary rule change will permit the Exchange¹⁶ to effectively conduct hearings during the COVID-19 pandemic in situations where in-person hearings present likely public health risks. The ability to conduct hearings by video conference will thereby permit the adjudicatory functions of the Exchange's rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to proceed without delay, thereby enabling the Exchange to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

Conducting hearings via video conference will give the parties and adjudicators simultaneous visual and oral communication without the risks inherent in physical proximity during a pandemic. Temporarily permitting hearings to proceed by video conference maintains fair process by providing respondents a timely opportunity to address and potentially resolve any allegations of misconduct.

As noted, FINRA will use a high quality, secure video conferencing technology with features that will allow the parties to reasonably approximate those tasks that are

¹⁶ As noted herein, FINRA and its Office of Hearing Officers administers disciplinary hearings on the Exchange's behalf.

typically performed at an in-person hearing, such as sharing documents, marking documents, and utilizing breakout rooms. FINRA will also provide training for participants on how to use the video conferencing platform and detailed guidance on the procedures that will govern such hearings. Moreover, the Chief or Deputy Chief Hearing Officer may take into consideration, among other things, a hearing participant's access to connectivity and technology in scheduling a video conference hearing and can also, at their discretion, allow a party or witness to participate by telephone, if necessary, to address such access issues.

The Exchange believes that the temporary proposed rule change strikes an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while accounting for the significant health and safety risks of in-person hearings stemming from the outbreak of COVID-19.

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 not intended to address competitive issues but is rather intended solely to provide temporary relief given the impacts of the COVID-19 pandemic. In its filing, FINRA provides an abbreviated economic impact assessment maintaining that the changes are necessary to temporarily rebalance the attendant benefits and costs of the obligations under FINRA Rules 1015, 9261, 9524 and 9830 in response to the impacts of the COVID-19 pandemic that is equally applicable to the changes the

Exchange proposes.¹⁷ The Exchange accordingly incorporates FINRA's abbreviated economic impact assessment by reference.

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.

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)¹⁸ of the Act and Rule 19b-4(f)(6) thereunder¹⁹ 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 this filing is non-controversial and eligible to become effective immediately because the proposal promotes uniformity in rules across self-regulatory organizations and thereby enables the Exchange to continue conducting hearings during the COVID-19 pandemic where the health risks of in-person hearings are significant. The Exchange proposes to adopt the rule changes in substantially the form

¹⁷ FINRA Filing, 85 FR at 55716.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁹ 17 CFR 240.19b-4(f)(6).

that they were adopted by FINRA. The Exchange further believes that the proposed rule change would not significantly affect the protection of investors or the public interest or impose any significant burden on competition because the changes are based on the rules of FINRA, and FINRA administers disciplinary hearings on the Exchange's behalf. Moreover, the proposed rule change is not intended to address competitive issues but rather is concerned solely with providing temporary relief given the impacts of the COVID-19 pandemic.

Furthermore, Rule 19b-4(f)(6)(iii)²⁰ 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.

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

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

The proposed rule changes are based on similar FINRA rule changes.²¹

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

Not applicable.

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ See note 5 above.

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.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2020-076)

November __, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Harmonize Exchange Rules 1015, 9261, 9524 and 9830 with recent changes by the Financial Industry Regulatory Authority, Inc.

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 November 5, 2020, 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 harmonize Exchange Rules 1015, 9261, 9524 and 9830 with recent changes by the Financial Industry Regulatory Authority, Inc. (“FINRA”). These amendments would temporarily grant the Exchange’s Office of Hearing Officers (“OHO”) and the Exchange Review Council (“ERC”) authority³ to conduct hearings in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ For OHO hearings under Exchange Rules 9261 and 9830, the proposed rule change temporarily grants authority to the Chief or Deputy Chief Hearing Officer to order that a hearing be conducted by video conference. For ERC hearings under Exchange Rules 1015 and 9524, this temporary authority is granted to the ERC or relevant Subcommittee.

connection with appeals of Membership Application Program decisions, disciplinary actions, eligibility proceedings and temporary and permanent cease and desist orders by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing. As proposed, these temporary amendments would be in effect through December 31, 2020.⁴

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to harmonize Exchange Rules 1015, 9261, 9524 and 9830 with recent changes by FINRA to its Rules 1015, 9261, 9524 and 9830 in order to temporarily grant OHO and the ERC authority to conduct hearings in connection with

⁴ If the Exchange requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2020, the Exchange may submit a separate rule filing to extend the expiration date of the temporary amendments under these rules. The amended Exchange rules will revert back to their current state at the conclusion of the temporary relief period and any extension thereof.

appeals of Membership Application Program decisions, disciplinary actions, eligibility proceedings and temporary and permanent cease and desist orders by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing. As proposed, these temporary amendments would be in effect through December 31, 2020.

Background

The Exchange's rules regarding hearing and evidentiary processes as set forth in Rules 1015, 9261, 9524 and 9830 model FINRA rules. As adopted, the text of Exchange Rule 1015 is substantially the same as FINRA Rule 1015, excepting additional provisions for Ex Parte Communications, Recusal or Disqualification, and conforming and technical differences. Similarly, the text of Exchange Rules 9261, 9524 and 9830 are substantially the same as FINRA Rules 9261, 9524 and 9830, except for conforming and technical differences.

In view of the ongoing spread of COVID-19 and its effect on FINRA's adjudicatory functions nationwide, FINRA recently filed a temporary rule change to grant FINRA's Office of Hearing Officers ("OHO") and the National Adjudicatory Council ("NAC") the authority to conduct certain hearings by video conference, if warranted by the current COVID-19-related public health risks posed by in-person hearings.⁵ Accordingly, the Exchange proposes to file this temporary rule change to align with FINRA.

⁵ See Securities Exchange Act Release Nos. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR-FINRA-2020-027) ("FINRA Filing").

A. OHO Hearings

FINRA represented in its filing that its protocol for conducting hearings by video conference would ensure that such hearings maintain fair process for the parties by, among other things, FINRA's use of a high quality, secure and user-friendly video conferencing service and provide thorough instructions, training and technical support to all hearing participants.⁶ According to FINRA, the proposed changes were a reasonable interim solution to allow FINRA's critical adjudicatory processes to continue to function while protecting the health and safety of hearing participants as FINRA works towards resuming in-person hearings in a manner that is compliant with the current guidance of public health authorities.⁷

Pursuant to a regulatory services agreement ("RSA") between the Exchange and FINRA, FINRA's Office of Hearing Officers administers all aspects of adjudications, including assigning hearing officers to serve as Exchange hearing officers. A hearing officer from OHO, among other things, presides over the disciplinary hearing, selects and chairs the hearing panel, and prepares and issues written decisions. The Chief or Deputy Hearing Officer for all Exchange disciplinary hearings are currently drawn from OHO and are all FINRA employees. The Exchange believes that OHO will utilize the same video conference protocol and processes for Exchange matters under the RSA as it proposes for FINRA matters.

Given that FINRA and its Office of Hearing Officers administers disciplinary hearings on the Exchange's behalf, and given that the public health concerns addressed

⁶ See FINRA Filing, 85 FR at 55713.

⁷ See id.

by FINRA's amendments apply equally to the Exchange's disciplinary hearings, the Exchange proposes to temporarily amend its disciplinary rules to allow FINRA, pursuant to the RSA, to conduct virtual hearings on its behalf.

B. ERC Hearings

Mirroring FINRA's National Adjudicatory Council, the ERC is the Exchange's appellate body, which reviews initial decisions issued by OHO and – through Subcommittees – holds evidentiary hearings for Membership Application Program decision appeals and eligibility proceedings under Exchange Rules 1015 or 9524. As with OHO hearings discussed above, this temporary proposed rule change will allow the ERC or relevant Subcommittee to make an assessment as to whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference.

Proposed Rule Change

Consistent with FINRA's temporary amendment to FINRA Rules 1015, 9261, 9524 and 9830, the Exchange proposes to temporarily grant OHO and the ERC authority to conduct hearings in connection with appeals of Membership Application Program decisions, disciplinary actions, eligibility proceedings and temporary and permanent cease and desist orders by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing. The proposed change will permit OHO and ERC to make an assessment, based on critical COVID-19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted, FINRA has adopted a detailed and

thorough protocol to ensure that hearings conducted by video conference will maintain fair process for the parties.⁸ The Exchange believes that this is a reasonable procedure to follow in hearings under Rules 1015, 9261, 9524 and 9830.⁹

To effectuate these changes, the Exchange proposes to add the following sentence to Rule 1015(f):

Upon consideration of the current public health risks presented by an in-person hearing, the Exchange Review Council or Subcommittee may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

The proposed text is substantially the same as the language adopted by FINRA, excepting conforming and technical differences.¹⁰

Similarly, the Exchange proposes to add the following sentence to Rule 9261(b):

Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

⁸ See FINRA Filing, 85 FR at 55713.

⁹ The Exchange notes, as did FINRA, that SEC's Rules of Practice pertaining to temporary cease-and-desist orders provide that parties and witnesses may participate by telephone or, in the Commission's discretion, through the use of alternative technologies that allow remote access, such as a video link. See SEC Rule of Practice 511(d)(3); Comment (d); see FINRA Filing, 85 FR at 55714, n. 21.

¹⁰ See FINRA Filing, 85 FR at 55712.

The proposed text is identical to the language adopted by FINRA.¹¹

Similarly, the Exchange proposes to add the following sentence to Rule 9524(a):

Upon consideration of the current public health risks presented by an in-person hearing, the Exchange Review Council or Review Subcommittee may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

The proposed text is substantially the same as the language adopted by FINRA, excepting conforming and technical differences.¹²

Similarly, the Exchange proposes to add the following sentence to Rule 9830(a):

Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

The proposed text is identical to the language adopted by FINRA.¹³

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ in particular,

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ 15 U.S.C. 78f(b).

in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing greater harmonization between the Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance.

As previously noted, with certain exceptions, the text of Exchange Rules 1015, 9261, 9524 and 9830 are substantially the same as FINRA's rules. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed temporary rule change will permit the Exchange¹⁶ to effectively conduct hearings during the COVID-19 pandemic in situations where in-person hearings present likely public health risks. The ability to conduct hearings by video conference will thereby permit the adjudicatory functions of the Exchange's rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to proceed without delay, thereby enabling the Exchange to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ As noted herein, FINRA and its Office of Hearing Officers administers disciplinary hearings on the Exchange's behalf.

Conducting hearings via video conference will give the parties and adjudicators simultaneous visual and oral communication without the risks inherent in physical proximity during a pandemic. Temporarily permitting hearings to proceed by video conference maintains fair process by providing respondents a timely opportunity to address and potentially resolve any allegations of misconduct.

As noted, FINRA will use a high quality, secure video conferencing technology with features that will allow the parties to reasonably approximate those tasks that are typically performed at an in-person hearing, such as sharing documents, marking documents, and utilizing breakout rooms. FINRA will also provide training for participants on how to use the video conferencing platform and detailed guidance on the procedures that will govern such hearings. Moreover, the Chief or Deputy Chief Hearing Officer may take into consideration, among other things, a hearing participant's access to connectivity and technology in scheduling a video conference hearing and can also, at their discretion, allow a party or witness to participate by telephone, if necessary, to address such access issues.

The Exchange believes that the temporary proposed rule change strikes an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while accounting for the significant health and safety risks of in-person hearings stemming from the outbreak of COVID-19.

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 not intended to address competitive issues but is rather

intended solely to provide temporary relief given the impacts of the COVID-19 pandemic. In its filing, FINRA provides an abbreviated economic impact assessment maintaining that the changes are necessary to temporarily rebalance the attendant benefits and costs of the obligations under FINRA Rules 1015, 9261, 9524 and 9830 in response to the impacts of the COVID-19 pandemic that is equally applicable to the changes the Exchange proposes.¹⁷ The Exchange accordingly incorporates FINRA's abbreviated economic impact assessment by reference.

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

No written comments were either solicited or received.

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

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 Act¹⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁹

¹⁷ FINRA Filing, 85 FR at 55716.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁹ 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.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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:

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-2020-076 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-2020-076. 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-2020-076 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.²⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

The Nasdaq Stock Market LLC Rules

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1000. MEMBERSHIP AND REGISTRATION RULES

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1015. Review by Exchange Review Council

(a) through (e) No Change.

(f) Hearing

(1) through (4) No Change.

(5) Video Conference Hearing

Upon consideration of the current public health risks presented by an in-person hearing, the Exchange Review Council or Subcommittee may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

(g) through (l) No Change.

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General 5 Discipline

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9000. Code of Procedure

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9200. Disciplinary Proceedings

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9261. Evidence and Procedure in Hearing

(a) No Change.

(b) Party's Right to be Heard

If a hearing is held, a Party shall be entitled to be heard in person, by counsel, or by the Party's representative. Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

(c) No Change.

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9500. Other Proceedings

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9524. Nasdaq Review Council Consideration

(a) Hearing Panel Consideration

(1) through (3) No Change.

(4) Rights of Disqualified Member, Sponsoring Member, Disqualified Person, and Department of Member Regulation

The disqualified member, sponsoring member, and/or disqualified person, as the case may be, and, the Department of Member Regulation, shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence. Upon consideration of the current public health risks presented by an

in-person hearing, the Exchange Review Council or Review Subcommittee may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

(5) through (10) No Change.

(b) No Change.

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9800. Temporary Cease and Desist Orders

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9830. Hearing

(a) When Held

The hearing shall be held not later than 15 days after service of the notice and filing initiating the temporary cease and desist proceeding, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. If a Hearing Officer or Hearing Panelist is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer or Hearing Panelist is appointed. Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

(b) through (h) No Change.

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