

Required fields are shown with yellow backgrounds and asterisks.

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

File No. \* SR 2022 - \* 044

Amendment No. (req. for Amendments \*)

Filing by The Nasdaq Stock Market LLC

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

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

Section 806(e)(2) \*

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

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

### Description

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

A proposal to extend the expiration date of the temporary amendments concerning video conference hearings from July 31, 2022, to October 31, 2022.

### 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 \* Assistant General Counsel  
E-mail \* olumuyiwa.odenyide@nasdaq.com  
Telephone \* (202) 817-7995 Fax

### Signature

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

Date 07/25/2022 (Title \*)  
By John Zecca EVP and Chief Legal Officer  
(Name \*)

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

 Date: 2022.07.25 17:08:22 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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SR-NASDAQ-2022-044 19b-4.doc

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

**Exhibit 1 - Notice of Proposed Rule Change \***

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SR-NASDAQ-2022-044 Exhibit 1.doc

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

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

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

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

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

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to extend the expiration date of the temporary amendments in SR-NASDAQ-2020-076 from July 31, 2022, to October 31, 2022.<sup>3</sup> The proposed rule change would not make any changes to the text of the Exchange rules.

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

(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 (the “Board”). 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.

The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not

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

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

<sup>3</sup> If the Exchange seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond October 31, 2022, the Exchange will submit a separate rule filing to further extend the temporary extension of time. The amended Exchange rules will revert to their original form at the conclusion of the temporary relief period and any extension thereof.

become operative for 30 days after the date of the filing, so that the Exchange can implement the proposed rule change immediately.

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

Olumuyiwa Odeniyide  
Assistant General 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 continue to harmonize Exchange Rules 1015, 9261, 9524 and 9830 with recent changes by the Financial Industry Regulatory Authority, Inc. (“FINRA”) to its Rules 1015, 9261, 9524 and 9830 in response to the COVID-19 global health crisis and the corresponding need to restrict in-person activities. The Exchange originally filed proposed rule change SR-NASDAQ-2020-076, which allows the Exchange’s Office of Hearing Officers (“OHO”) and the Exchange Review Council (“ERC”) to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing. In March 2022, the Exchange filed a proposed rule change, SR-NASDAQ-2022-028, to extend the expiration date of the temporary amendments in SR- NASDAQ-2020-076 from March 31, 2022, to July 31, 2022.<sup>4</sup>

Even though it has been more than two years since the World Health Organization declared COVID-19 a pandemic, uncertainty still remains around this disease. The

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<sup>4</sup> See Securities Exchange Act Release No. 94610 (April 5, 2022), 87 FR 21225 (April 11, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2022-028).

continued presence of COVID-19 variants including the quickly emerging Omicron BA.4 and BA.5 subvariants, dissimilar vaccination rates throughout the United States, and the current medium to high COVID-19 community levels in many states indicate that COVID-19 remains an active and real public health concern.<sup>5</sup> Due to the uncertainty and the lack of a clear timeframe for a sustained and widespread abatement of COVID-19-related health concerns and corresponding restrictions,<sup>6</sup> the Exchange believes that there is a continued need for temporary relief beyond July 31, 2022. Accordingly, the Exchange proposes to extend the expiration date of the temporary rule amendments in SR-NASDAQ-2020-076 from July 31, 2022, to October 31, 2022.

On November 5, 2020, the Exchange filed, and subsequently extended to July 31, 2022, SR-NASDAQ-2020-076, to temporarily amend Exchange Rules 1015, 9261, 9524

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<sup>5</sup> For example, there has been a notable upward trend in the number of daily COVID-19 cases in the United States since April 1, 2022. See [https://covid.cdc.gov/covid-data-tracker/#trends\\_dailycases](https://covid.cdc.gov/covid-data-tracker/#trends_dailycases). In addition, on June 9, 2022, the Biden Administration announced its operational plan for COVID-19 vaccinations for children under the age of five. See <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/09/fact-sheet-biden-administration-announces-operational-plan-for-covid-19-vaccinations-for-children-under-5/>.

<sup>6</sup> For instance, the Centers for Disease Control (“CDC”) recommends that people wear a mask in public indoor settings in areas with a high COVID-19 community level regardless of vaccination status or individual risk. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html>. The CDC also recommends that people wear a mask in indoor areas of public transportation and transportation hubs to protect themselves and those around them and help keep travel and public transportation safer for everyone. See <https://www.cdc.gov/coronavirus/2019-ncov/travelers/masks-public-transportation.html>. Furthermore, numerous states currently have mask mandates in certain settings, such as healthcare and correctional facilities.

and 9830 to grant OHO and the ERC authority<sup>7</sup> 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 COVID-19-related public health risks posed by an in-person hearing.<sup>8</sup>

As set forth in the previous filings, the Exchange also relies on COVID-19 data and the guidance issued by public health authorities to determine whether the current public health risks presented by an in-person hearing may warrant a hearing by video conference.<sup>9</sup> Based on that data and guidance, the Exchange does not believe the COVID-19- related health concerns necessitating this relief will meaningfully subside by July 31, 2022, and believes that there will be a continued need for this temporary relief beyond that date. Accordingly, the Exchange proposes to extend the expiration date of

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<sup>7</sup> 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.

<sup>8</sup> See Securities Exchange Act Release No. 90390 (November 10, 2020), 85 FR 73302 (November 17, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2020-076); see also Securities Exchange Act Release No. 90774 (December 22, 2020), 85 FR 86614 (December 30, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2020-092); Securities Exchange Act Release No. 91763 (May 4, 2021), 86 FR 25055 (May 10, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2021-033); Securities Exchange Act Release No. 92911 (September 9, 2021), 86 FR 51395 (September 15, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2021-067); Securities Exchange Act Release No. 93852 (December 22, 2021), 86 FR 74201 (December 29, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2021-104); supra note 4.

<sup>9</sup> As noted in SR-NASDAQ-2020-076, the temporary proposed rule change grants discretion to OHO and the ERC to order a video conference hearing. In deciding whether to schedule a hearing by video conference, OHO and the ERC may consider a variety of other factors in addition to COVID-19 trends.

the temporary rule amendments originally set forth in SR-NASDAQ-2020-076 from July 31, 2022, to October 31, 2022. The extension of these temporary amendments allowing for specified OHO and ERC hearings to proceed by video conference will allow the Exchange's critical adjudicatory functions to continue to operate effectively in these extraordinary circumstances – enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets – while also protecting the health and safety of hearing participants.

The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> 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 continuing to provide greater harmonization between the Exchange rules and FINRA rules of similar purpose,<sup>12</sup> resulting in less burdensome and more efficient regulatory compliance.

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-018).

The proposed rule change, which extends the expiration date of the temporary amendments to the Exchange rules set forth in SR-NASDAQ-2020-076, will continue to aid the Exchange's efforts to timely conduct hearings in connection with its core adjudicatory functions. Given the current and frequently changing COVID-19 conditions and the uncertainty around when those conditions will see meaningful, widespread, and sustained improvement, without this relief allowing OHO and ERC hearings to proceed by video conference, the Exchange might be required to postpone some or almost all hearings indefinitely. The Exchange must be able to perform its critical adjudicatory functions to fulfill its statutory obligations to protect investors and maintain fair and orderly markets. As such, this relief is essential to the Exchange's ability to fulfill its statutory obligations and allows hearing participants to avoid the serious COVID-19-related health and safety risks associated with in-person hearings.

Among other things, this relief will allow OHO to conduct temporary cease and desist proceedings by video conference so that the Exchange can take immediate action to stop ongoing customer harm and will allow the ERC to timely provide members, disqualified individuals and other applicants an approval or denial of their applications. As set forth in detail in SR-NASDAQ-2020-076, this temporary relief allowing OHO and ERC hearings to proceed by video conference accounts for fair process considerations and will continue to provide fair process while avoiding the COVID-19-related public health risks for hearing participants. Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

#### 4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the temporary proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the



purposes of the Act. As set forth in SR-NASDAQ-2020-076, the proposed rule change is intended solely to extend temporary relief necessitated by the continued impacts of the COVID-19 outbreak and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to its operations, including its critical adjudicatory processes, and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on July 31, 2022.

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)<sup>13</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>14</sup> 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.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

The Exchange requests that the Commission waive the requirement that the proposed rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii),<sup>15</sup> so that the proposed rule change may become operative immediately. Waiver of the operative delay would allow the proposed changes, which are designed to minimize disruptions to the Exchange's operations in order to maintain fair processes and fulfill its obligations to protect investors and maintain fair and orderly markets, to be operative on the date of filing. Given that the need for the temporary relief provided originally by the Exchange persists, waiving the 30-day operative delay would provide continuation and an uninterrupted extension of this necessary relief.<sup>16</sup>

Furthermore, Rule 19b-4(f)(6)(iii)<sup>17</sup> 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.

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.<sup>18</sup>

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

Not applicable.

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<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> The Exchange notes that waiver of the 30-day operative period here is consistent with previous extensions of this temporary relief. See, e.g., SR-NASDAQ-2022-028, supra note 4.

<sup>17</sup> Supra note 15.

<sup>18</sup> Supra note 12.

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.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2022-044)

July, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Expiration Date of the Temporary Amendments Concerning Video Conference Hearings

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 25, 2022, 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 Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 extend the expiration date of the temporary amendments in SR-NASDAQ-2020-076 from July 31, 2022, to October 31, 2022.<sup>4</sup> The proposed rule change would not make any changes to the text of the Exchange rules.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> If the Exchange seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond October 31, 2022, the

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 continue to harmonize Exchange Rules 1015, 9261, 9524 and 9830 with recent changes by the Financial Industry Regulatory Authority, Inc. ("FINRA") to its Rules 1015, 9261, 9524 and 9830 in response to the COVID-19 global health crisis and the corresponding need to restrict in-person activities. The Exchange originally filed proposed rule change SR-NASDAQ-2020-076, which allows the Exchange's Office of Hearing Officers ("OHO") and the Exchange Review Council ("ERC") to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing. In March 2022, the Exchange filed a proposed rule change, SR-NASDAQ-2022-028, to

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Exchange will submit a separate rule filing to further extend the temporary extension of time. The amended Exchange rules will revert to their original form at the conclusion of the temporary relief period and any extension thereof.

extend the expiration date of the temporary amendments in SR- NASDAQ-2020-076 from March 31, 2022, to July 31, 2022.<sup>5</sup>

Even though it has been more than two years since the World Health Organization declared COVID-19 a pandemic, uncertainty still remains around this disease. The continued presence of COVID-19 variants including the quickly emerging Omicron BA.4 and BA.5 subvariants, dissimilar vaccination rates throughout the United States, and the current medium to high COVID-19 community levels in many states indicate that COVID-19 remains an active and real public health concern.<sup>6</sup> Due to the uncertainty and the lack of a clear timeframe for a sustained and widespread abatement of COVID-19-related health concerns and corresponding restrictions,<sup>7</sup> the Exchange believes that there is a continued need for temporary relief beyond July 31, 2022. Accordingly, the

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<sup>5</sup> See Securities Exchange Act Release No. 94610 (April 5, 2022), 87 FR 21225 (April 11, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2022-028).

<sup>6</sup> For example, there has been a notable upward trend in the number of daily COVID-19 cases in the United States since April 1, 2022. See [https://covid.cdc.gov/covid-data-tracker/#trends\\_dailycases](https://covid.cdc.gov/covid-data-tracker/#trends_dailycases). In addition, on June 9, 2022, the Biden Administration announced its operational plan for COVID-19 vaccinations for children under the age of five. See <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/09/fact-sheet-biden-administration-announces-operational-plan-for-covid-19-vaccinations-for-children-under-5/>.

<sup>7</sup> For instance, the Centers for Disease Control (“CDC”) recommends that people wear a mask in public indoor settings in areas with a high COVID-19 community level regardless of vaccination status or individual risk. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html>. The CDC also recommends that people wear a mask in indoor areas of public transportation and transportation hubs to protect themselves and those around them and help keep travel and public transportation safer for everyone. See <https://www.cdc.gov/coronavirus/2019-ncov/travelers/masks-public-transportation.html>. Furthermore, numerous states currently have mask mandates in certain settings, such as healthcare and correctional facilities.

Exchange proposes to extend the expiration date of the temporary rule amendments in SR-NASDAQ-2020-076 from July 31, 2022, to October 31, 2022.

On November 5, 2020, the Exchange filed, and subsequently extended to July 31, 2022, SR-NASDAQ-2020-076, to temporarily amend Exchange Rules 1015, 9261, 9524 and 9830 to grant OHO and the ERC authority<sup>8</sup> 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 COVID-19-related public health risks posed by an in-person hearing.<sup>9</sup>

As set forth in the previous filings, the Exchange also relies on COVID-19 data and the guidance issued by public health authorities to determine whether the current public health risks presented by an in-person hearing may warrant a hearing by video conference.<sup>10</sup> Based on that data and guidance, the Exchange does not believe the

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<sup>8</sup> 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.

<sup>9</sup> See Securities Exchange Act Release No. 90390 (November 10, 2020), 85 FR 73302 (November 17, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2020-076); see also Securities Exchange Act Release No. 90774 (December 22, 2020), 85 FR 86614 (December 30, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2020-092); Securities Exchange Act Release No. 91763 (May 4, 2021), 86 FR 25055 (May 10, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2021-033); Securities Exchange Act Release No. 92911 (September 9, 2021), 86 FR 51395 (September 15, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2021-067); Securities Exchange Act Release No. 93852 (December 22, 2021), 86 FR 74201 (December 29, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2021-104); supra note 5.

<sup>10</sup> As noted in SR-NASDAQ-2020-076, the temporary proposed rule change grants discretion to OHO and the ERC to order a video conference hearing. In deciding

COVID-19- related health concerns necessitating this relief will meaningfully subside by July 31, 2022, and believes that there will be a continued need for this temporary relief beyond that date. Accordingly, the Exchange proposes to extend the expiration date of the temporary rule amendments originally set forth in SR-NASDAQ-2020-076 from July 31, 2022, to October 31, 2022. The extension of these temporary amendments allowing for specified OHO and ERC hearings to proceed by video conference will allow the Exchange's critical adjudicatory functions to continue to operate effectively in these extraordinary circumstances – enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets – while also protecting the health and safety of hearing participants.

The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> 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 continuing

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whether to schedule a hearing by video conference, OHO and the ERC may consider a variety of other factors in addition to COVID-19 trends.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).



to provide greater harmonization between the Exchange rules and FINRA rules of similar purpose,<sup>13</sup> resulting in less burdensome and more efficient regulatory compliance.

The proposed rule change, which extends the expiration date of the temporary amendments to the Exchange rules set forth in SR-NASDAQ-2020-076, will continue to aid the Exchange's efforts to timely conduct hearings in connection with its core adjudicatory functions. Given the current and frequently changing COVID-19 conditions and the uncertainty around when those conditions will see meaningful, widespread, and sustained improvement, without this relief allowing OHO and ERC hearings to proceed by video conference, the Exchange might be required to postpone some or almost all hearings indefinitely. The Exchange must be able to perform its critical adjudicatory functions to fulfill its statutory obligations to protect investors and maintain fair and orderly markets. As such, this relief is essential to the Exchange's ability to fulfill its statutory obligations and allows hearing participants to avoid the serious COVID-19-related health and safety risks associated with in-person hearings.

Among other things, this relief will allow OHO to conduct temporary cease and desist proceedings by video conference so that the Exchange can take immediate action to stop ongoing customer harm and will allow the ERC to timely provide members, disqualified individuals and other applicants an approval or denial of their applications. As set forth in detail in SR-NASDAQ-2020-076, this temporary relief allowing OHO and ERC hearings to proceed by video conference accounts for fair process considerations and will continue to provide fair process while avoiding the COVID-19-related public

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<sup>13</sup> See Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-018).

health risks for hearing participants. Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the temporary proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As set forth in SR-NASDAQ-2020-076, the proposed rule change is intended solely to extend temporary relief necessitated by the continued impacts of the COVID-19 outbreak and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to its operations, including its critical adjudicatory processes, and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on July 31, 2022.

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 Act<sup>14</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>16</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>17</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

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.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>15</sup> 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.

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2022-044 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-2022-044. 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-2022-044 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.<sup>18</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).