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

File No. * SR 2024 - * 083

Amendment No. (req. for Amendments *)

Filing by The Nasdaq Stock Market LLC

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

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

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

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

Section 806(e)(2) *

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

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

A proposal to assume operational responsibility for certain enforcement functions currently performed by the Financial Industry Regulatory Authority ("FINRA") under the Exchange's authority and supervision.

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 * Dane Last Name * Dixon

Title * Associate General Counsel

E-mail * Dane.Dixon@nasdaq.com

Telephone * (470) 432-4607 Fax


Signature

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

Date 12/11/2024 (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: 2024.12.11
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Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-NASDAQ-2024-083 19b-4.docx

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-2024-083 Exhibit 1.docx

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

Add Remove View

SR-NASDAQ-2024-083 Exhibit 5.docx

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 assume operational responsibility for certain enforcement functions currently performed by the Financial Industry Regulatory Authority (“FINRA”) under the Exchange’s authority and supervision. Specifically, the Exchange proposes to (1) assume operational responsibility for litigating contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities, and (2) amend Rules 9131 and 9180 (of General 5, the Nasdaq Discipline Rules) to grant Nasdaq Regulation the same authority as FINRA in contested disciplinary proceedings to serve complaints and memoranda of authority.

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 the Board of Directors of the Exchange on November 20, 2024. 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.

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

Dane Dixon
Associate General Counsel
Nasdaq, Inc.
470-432-4607

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

a. Purpose

Section 6 of the Act requires that national securities exchanges enforce their members’ compliance with federal securities laws and rules as well as the exchanges’ own rules.³ As a self-regulatory organization (“SRO”), Nasdaq must have a comprehensive regulatory program that includes the investigation and prosecution of rule violations. Since it became a national securities exchange, Nasdaq has contracted with FINRA through various regulatory services agreements (“RSAs”) to perform certain of these regulatory functions on its behalf. However, as the Commission has made clear, “the Nasdaq Exchange bears the responsibility for self-regulatory conduct and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on the Exchange’s behalf.”⁴

³ 15 U.S.C. 78(f).

⁴ Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550, 3556 (January 23, 2006).

b. Background

In April 2019, Nasdaq received Commission approval to reallocate operational responsibility from FINRA to Nasdaq Regulation Department⁵ for certain investigation and enforcement activity,⁶ namely:

- investigation and enforcement responsibilities for conduct occurring on The Nasdaq Options Market,⁷ and
- investigation and enforcement responsibilities for conduct occurring on Nasdaq's equity market only, i.e., conduct not also on non-Nasdaq-affiliated equities markets.⁸

In March 2020, Nasdaq received Commission approval to reallocate operational responsibility from FINRA to Nasdaq Regulation for additional enforcement activity, namely the handling of certain contested disciplinary proceedings.⁹ Specifically, Nasdaq requested and received authority to handle contested disciplinary proceedings arising out of Nasdaq-led investigation and enforcement activities that “FINRA is unable or unwilling to handle due to strained resources or other similar limitations.”¹⁰ For those

⁵ Under Nasdaq Rule 9120(t), Nasdaq Regulation includes the Nasdaq Enforcement Department.

⁶ Securities Exchange Act Release No. 85505 (April 3, 2019), 84 FR 14170, 14171 (April 9, 2016).

⁷ As appropriate, Nasdaq Regulation coordinates with other SROs to avoid regulatory duplication in cross-market investigations, primarily through the Cross Market Regulation Working Group.

⁸ With respect to the operational responsibilities described, Nasdaq Regulation already performed these functions for the Nasdaq PHLX LLC (“Phlx”), Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”), and Nasdaq MRX, LLC (“MRX”) because there is no comparable rule to Rule General 2, Section 7 on those markets. Nasdaq BX, Inc. (“BX”), which does have a comparable rule to Rule General 2, Section 7, received Commission approval to perform these functions in June 2019. See Securities Exchange Act Release No. 86051 (June 6, 2019), 84 FR 27387 (June 22, 2019).

⁹ See Securities Exchange Act Release No. 88209 (February 13, 2020), 85 FR 9870 (February 20, 2020), as modified by Amendment No 1.; Securities Exchange Act Release No. 88516 (March 30, 2020), 85 FR 19042 (April 3, 2020).

¹⁰ *Id.*

contested disciplinary proceedings over which Nasdaq did not request approval to assume operational responsibility, FINRA continues to litigate those matters under the Exchange's supervision.

c. Proposed Rule Change

Now the Exchange requests approval to (1) assume operational responsibility for litigating contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities, and (2) amend Rules 9131 and 9180 (of General 5, the Nasdaq Discipline Rules) to grant Nasdaq Regulation the same authority as FINRA in contested disciplinary proceedings to serve complaints and memoranda of authority.

Reallocation of Operational Responsibility

The March 2020 Commission approval vested Nasdaq with the authority to litigate a subset of contested disciplinary proceedings pertinent to the Exchange (i.e., those contested disciplinary matters arising out of Nasdaq-led investigations and enforcement activities that "FINRA is unable or unwilling to handle due to strained resources or other similar limitations").¹¹ This proposal expands Nasdaq's enforcement authority by enabling Nasdaq Regulation to litigate contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities in the first instance, regardless of FINRA's ability or willingness to handle the matter.

Nasdaq's assumption of broader operational responsibility for litigating contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities allows for the more immediate and efficient enforcement of federal securities laws and rules and Nasdaq's own rules. Nasdaq enjoys deep expertise in its own market

¹¹ See *supra* n. 9.

structure and in surveillance on the Exchange. When a Nasdaq investigation identifies impermissible activity on its Exchange and Nasdaq cannot settle the matter with the responsible Nasdaq member, Nasdaq Regulation's assumption of the ability to litigate the contested disciplinary proceeding avoids the need for FINRA's Enforcement Department to familiarize itself with the Nasdaq-led investigation and consequently helps expedite the enforcement of Nasdaq's rules and the securities laws and rules with which Nasdaq members must comply.

The Exchange notes that this proposal would not change the disciplinary process or the procedural protections already afforded to Nasdaq members in contested disciplinary proceedings. For example, the rules applicable to the disciplinary process remain the same, and FINRA's Office of Hearing Officers will continue to administer the hearing process for all contested disciplinary proceedings. Therefore, regardless of whether FINRA or the Exchange is responsible for litigating the matter, FINRA's Office of Hearing Officers will administer the hearing process.¹²

Nasdaq Rule General 2, Section 7 requires that Nasdaq obtain Commission approval if regulatory functions subject to RSAs in effect at the time that Nasdaq began to operate as a national securities exchange are no longer performed by FINRA or an affiliate thereof, or by another independent self-regulatory organization. Nasdaq believes that assuming operational responsibility for contested disciplinary proceedings arising out of Nasdaq-led investigations will further its regulatory program and benefit investors and the markets. Commission approval of the proposal would allow Nasdaq to deliver

¹² FINRA's Office of Hearing Officers plays no role in uncontested disciplinary proceedings.

increased efficiencies in the regulation of its market and to more effectively and promptly regulate activity on its market.

Notwithstanding that approval, FINRA will continue to perform certain functions pursuant to a RSA,¹³ including, among other things, the handling of certain contested disciplinary proceedings arising out of FINRA-led investigation and enforcement activities.¹⁴

Technical Amendments Permitting Nasdaq Regulation to Serve Complaints and Memoranda of Authorities

Nasdaq also proposes two technical updates to its Code of Procedure. Specifically, the proposed amendments will permit Nasdaq Regulation Department to serve (1) complaints and; (2) memoranda of authority in support of temporary cease-and-desist orders in contested disciplinary proceedings. Under the current rules, which Nasdaq adopted before the March 2020 rule change permitting Nasdaq Regulation to litigate certain contested disciplinary matters, only FINRA's Department of Enforcement may serve a respondent with either a complaint or a memorandum of authorities supporting a temporary cease-and-desist order. These technical amendments would avoid the need for FINRA to serve Nasdaq-authored complaints and memoranda of authority on respondents, streamlining litigation in contested disciplinary proceedings handled by Nasdaq Regulation. These technical amendments also align the two affected

¹³ In addition to work performed pursuant to a RSA, FINRA also performs work for matters covered by agreements to allocate regulatory responsibility under Rule 17d-2 of the Act.

¹⁴ Although Nasdaq anticipates handling contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities, Nasdaq retains the right to refer particular matters arising out of Nasdaq-led investigations or enforcement activities to FINRA's Department of Enforcement to handle in appropriate circumstances.

rules with the remainder of General 5 (the Nasdaq Discipline Rules), which rules grant Nasdaq Regulation and FINRA’s Department of Enforcement equivalent powers.

Pursuant to Rule 9131(a) (contained in General 5), “a complaint shall be served on each Party by the [FINRA] Department of Enforcement.” The proposed amendment would permit Nasdaq Regulation to also serve a complaint. Similarly, in contested disciplinary proceedings in which Nasdaq or FINRA seeks a temporary cease-and-desist order, Rule 9810(b)(2) (contained in General 5) permits only FINRA’s Department of Enforcement to serve a memorandum of authorities in support of the temporary cease-and-desist request. This proposed amendment grants Nasdaq Regulation the same authority as FINRA’s Department of Enforcement to serve a memorandum of authorities.

b. Statutory Basis

The Exchange believes that its proposals are consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ 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 proposals furthers the objectives of Section 6(b)(7) of the Act,¹⁷ in particular, in that these changes will continue to 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

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(7).

limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof.

The Exchange believes that its proposal is in keeping with those principles because it will ensure that contested matters retained by the Nasdaq Regulation Department are handled effectively, efficiently and with immediacy. Nasdaq will manage these cases directly in all instances, with Nasdaq retaining the option to refer cases to FINRA if Nasdaq's resources are constrained or if another circumstance warrants FINRA litigating a contested disciplinary proceeding under Nasdaq's supervision. This approach allows Nasdaq to take timely action when appropriate, enforce its rules, and uphold investor protection and market integrity. The proposed amendments, however, would not change or alter in any way the disciplinary processes around how contested matters are handled. Rather, they will result in more effective regulation because it will facilitate timely and more efficient action. Internalizing the litigation function in Nasdaq-led contested matters will also facilitate effective regulation because the Exchange will continue to bring to bear its overall market and surveillance expertise throughout the disciplinary proceedings. Permitting Nasdaq to serve (1) complaints and (2) memoranda of authority in support of temporary cease-and-desist orders are ministerial changes that will enable Nasdaq to more quickly and efficiently litigate contested disciplinary matters arising out of Nasdaq-led investigations.

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 primarily administrative in nature and does not introduce any competitive concerns. Rather than addressing competitive issues, the

purpose and effect of the proposed rule change is to enable Nasdaq to litigate contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities. Permitting Nasdaq to serve (1) complaints and (2) memoranda of authority in support of temporary cease-and-desist orders are ministerial changes and do not introduce any competitive concerns.

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)

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2024-083)

December 11, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Assume Operational Responsibility for Litigating Contested Disciplinary Proceedings Arising Out of Nasdaq-led Investigations and Enforcement Activities and Amend Rules 9131 and 9180 (of General 5, the Nasdaq Discipline Rules) to Grant Nasdaq Regulation the Same Authority as FINRA In Contested Disciplinary Proceedings to Serve Complaints and Memoranda of Authority.

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 December 11, 2024, 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 assume operational responsibility for certain enforcement functions currently performed by the Financial Industry Regulatory Authority (“FINRA”) under the Exchange’s authority and supervision. Specifically, the Exchange proposes to (1) assume operational responsibility for litigating contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities, and (2) amend Rules 9131 and 9180 (of General 5, the Nasdaq Discipline

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Rules) to grant Nasdaq Regulation the same authority as FINRA in contested disciplinary proceedings to serve complaints and memoranda of authority.

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

Section 6 of the Act requires that national securities exchanges enforce their members' compliance with federal securities laws and rules as well as the exchanges' own rules.³ As a self-regulatory organization ("SRO"), Nasdaq must have a comprehensive regulatory program that includes the investigation and prosecution of rule violations. Since it became a national securities exchange, Nasdaq has contracted with FINRA through various regulatory services agreements ("RSAs") to perform certain of these regulatory functions on its behalf. However, as the Commission has made clear, "the Nasdaq Exchange bears the responsibility for self-regulatory conduct and primary

³ 15 U.S.C. 78(f).

liability for self-regulatory failures, not the SRO retained to perform regulatory functions on the Exchange's behalf.”⁴

a. Background

In April 2019, Nasdaq received Commission approval to reallocate operational responsibility from FINRA to Nasdaq Regulation Department⁵ for certain investigation and enforcement activity,⁶ namely:

- investigation and enforcement responsibilities for conduct occurring on The Nasdaq Options Market,⁷ and
- investigation and enforcement responsibilities for conduct occurring on Nasdaq's equity market only, i.e., conduct not also on non-Nasdaq-affiliated equities markets.⁸

In March 2020, Nasdaq received Commission approval to reallocate operational responsibility from FINRA to Nasdaq Regulation for additional enforcement activity, namely the handling of certain contested disciplinary proceedings.⁹ Specifically, Nasdaq

⁴ Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550, 3556 (January 23, 2006).

⁵ Under Nasdaq Rule 9120(t), Nasdaq Regulation includes the Nasdaq Enforcement Department.

⁶ Securities Exchange Act Release No. 85505 (April 3, 2019), 84 FR 14170, 14171 (April 9, 2019).

⁷ As appropriate, Nasdaq Regulation coordinates with other SROs to avoid regulatory duplication in cross-market investigations, primarily through the Cross Market Regulation Working Group.

⁸ With respect to the operational responsibilities described, Nasdaq Regulation already performed these functions for the Nasdaq PHLX LLC (“Phlx”), Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”), and Nasdaq MRX, LLC (“MRX”) because there is no comparable rule to Rule General 2, Section 7 on those markets. Nasdaq BX, Inc. (“BX”), which does have a comparable rule to Rule General 2, Section 7, received Commission approval to perform these functions in June 2019. See Securities Exchange Act Release No. 86051 (June 6, 2019), 84 FR 27387 (June 22, 2019).

⁹ See Securities Exchange Act Release No. 88209 (February 13, 2020), 85 FR 9870 (February 20, 2020), as modified by Amendment No 1.; Securities Exchange Act Release No. 88516 (March 30, 2020), 85 FR 19042 (April 3, 2020).

requested and received authority to handle contested disciplinary proceedings arising out of Nasdaq-led investigation and enforcement activities that “FINRA is unable or unwilling to handle due to strained resources or other similar limitations.”¹⁰ For those contested disciplinary proceedings over which Nasdaq did not request approval to assume operational responsibility, FINRA continues to litigate those matters under the Exchange’s supervision.

b. Proposed Rule Change

Now the Exchange requests approval to (1) assume operational responsibility for litigating contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities, and (2) amend Rules 9131 and 9180 (of General 5, the Nasdaq Discipline Rules) to grant Nasdaq Regulation the same authority as FINRA in contested disciplinary proceedings to serve complaints and memoranda of authority.

Reallocation of Operational Responsibility

The March 2020 Commission approval vested Nasdaq with the authority to litigate a subset of contested disciplinary proceedings pertinent to the Exchange (i.e., those contested disciplinary matters arising out of Nasdaq-led investigations and enforcement activities that “FINRA is unable or unwilling to handle due to strained resources or other similar limitations”).¹¹ This proposal expands Nasdaq’s enforcement authority by enabling Nasdaq Regulation to litigate contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities in the first instance, regardless of FINRA’s ability or willingness to handle the matter.

¹⁰ *Id.*

¹¹ *See supra* n. 9.

Nasdaq's assumption of broader operational responsibility for litigating contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities allows for the more immediate and efficient enforcement of federal securities laws and rules and Nasdaq's own rules. Nasdaq enjoys deep expertise in its own market structure and in surveillance on the Exchange. When a Nasdaq investigation identifies impermissible activity on its Exchange and Nasdaq cannot settle the matter with the responsible Nasdaq member, Nasdaq Regulation's assumption of the ability to litigate the contested disciplinary proceeding avoids the need for FINRA's Enforcement Department to familiarize itself with the Nasdaq-led investigation and consequently helps expedite the enforcement of Nasdaq's rules and the securities laws and rules with which Nasdaq members must comply.

The Exchange notes that this proposal would not change the disciplinary process or the procedural protections already afforded to Nasdaq members in contested disciplinary proceedings. For example, the rules applicable to the disciplinary process remain the same, and FINRA's Office of Hearing Officers will continue to administer the hearing process for all contested disciplinary proceedings. Therefore, regardless of whether FINRA or the Exchange is responsible for litigating the matter, FINRA's Office of Hearing Officers will administer the hearing process.¹²

Nasdaq Rule General 2, Section 7 requires that Nasdaq obtain Commission approval if regulatory functions subject to RSAs in effect at the time that Nasdaq began to operate as a national securities exchange are no longer performed by FINRA or an affiliate thereof, or by another independent self-regulatory organization. Nasdaq believes

¹² FINRA's Office of Hearing Officers plays no role in uncontested disciplinary proceedings.

that assuming operational responsibility for contested disciplinary proceedings arising out of Nasdaq-led investigations will further its regulatory program and benefit investors and the markets. Commission approval of the proposal would allow Nasdaq to deliver increased efficiencies in the regulation of its market and to more effectively and promptly regulate activity on its market.

Notwithstanding that approval, FINRA will continue to perform certain functions pursuant to a RSA,¹³ including, among other things, the handling of certain contested disciplinary proceedings arising out of FINRA-led investigation and enforcement activities.¹⁴

Technical Amendments Permitting Nasdaq Regulation to Serve Complaints and Memoranda of Authorities

Nasdaq also proposes two technical updates to its Code of Procedure. Specifically, the proposed amendments will permit Nasdaq Regulation Department to serve (1) complaints and; (2) memoranda of authority in support of temporary cease-and-desist orders in contested disciplinary proceedings. Under the current rules, which Nasdaq adopted before the March 2020 rule change permitting Nasdaq Regulation to litigate certain contested disciplinary matters, only FINRA's Department of Enforcement may serve a respondent with either a complaint or a memorandum of authorities supporting a temporary cease-and-desist order. These technical amendments would avoid the need for FINRA to serve Nasdaq-authored complaints and memoranda of

¹³ In addition to work performed pursuant to a RSA, FINRA also performs work for matters covered by agreements to allocate regulatory responsibility under Rule 17d-2 of the Act.

¹⁴ Although Nasdaq anticipates handling contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities, Nasdaq retains the right to refer particular matters arising out of Nasdaq-led investigations or enforcement activities to FINRA's Department of Enforcement to handle in appropriate circumstances.

authority on respondents, streamlining litigation in contested disciplinary proceedings handled by Nasdaq Regulation. These technical amendments also align the two affected rules with the remainder of General 5 (the Nasdaq Discipline Rules), which rules grant Nasdaq Regulation and FINRA's Department of Enforcement equivalent powers.

Pursuant to Rule 9131(a) (contained in General 5), "a complaint shall be served on each Party by the [FINRA] Department of Enforcement." The proposed amendment would permit Nasdaq Regulation to also serve a complaint. Similarly, in contested disciplinary proceedings in which Nasdaq or FINRA seeks a temporary cease-and-desist order, Rule 9810(b)(2) (contained in General 5) permits only FINRA's Department of Enforcement to serve a memorandum of authorities in support of the temporary cease-and-desist request. This proposed amendment grants Nasdaq Regulation the same authority as FINRA's Department of Enforcement to serve a memorandum of authorities.

2. Statutory Basis

The Exchange believes that its proposals are consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ 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 proposals furthers the objectives of Section 6(b)(7) of the Act,¹⁷ in particular, in that these changes will continue to provide for fair procedures for the disciplining of members and persons associated with members,

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(7).

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 believes that its proposal is in keeping with those principles because it will ensure that contested matters retained by the Nasdaq Regulation Department are handled effectively, efficiently and with immediacy. Nasdaq will manage these cases directly in all instances, with Nasdaq retaining the option to refer cases to FINRA if Nasdaq's resources are constrained or if another circumstance warrants FINRA litigating a contested disciplinary proceeding under Nasdaq's supervision. This approach allows Nasdaq to take timely action when appropriate, enforce its rules, and uphold investor protection and market integrity. The proposed amendments, however, would not change or alter in any way the disciplinary processes around how contested matters are handled. Rather, they will result in more effective regulation because it will facilitate timely and more efficient action. Internalizing the litigation function in Nasdaq-led contested matters will also facilitate effective regulation because the Exchange will continue to bring to bear its overall market and surveillance expertise throughout the disciplinary proceedings. Permitting Nasdaq to serve (1) complaints and (2) memoranda of authority in support of temporary cease-and-desist orders are ministerial changes that will enable Nasdaq to more quickly and efficiently litigate contested disciplinary matters arising out of Nasdaq-led investigations.

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 primarily administrative in nature and does not introduce any competitive concerns. Rather than addressing competitive issues, the purpose and effect of the proposed rule change is to enable Nasdaq to litigate contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities. Permitting Nasdaq to serve (1) complaints and (2) memoranda of authority in support of temporary cease-and-desist orders are ministerial changes and do not introduce any competitive concerns.

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

No written comments were either solicited or received.

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

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form

(<https://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-083 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-2024-083. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-083 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood,

Assistant Secretary.

¹⁸ 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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General Equity and Options Rules

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General 5: Discipline

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9131. Service of Complaint and Document Initiating a Proceeding**(a) Service on Each Party**

A complaint shall be served on each Party by the Nasdaq Regulation Department or the Department of Enforcement. A document initiating a proceeding shall be served on each Party by the Party or person initiating such proceeding or his or her counsel or representative.

(b) – (c) No Change.

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9810. Initiation of Proceeding**(a) No Change.****(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 or the Department of Enforcement is seeking to have the Respondent ordered to cease violating. The notice also shall state whether the Nasdaq Regulation Department or the Department of Enforcement 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 Nasdaq Regulation Department or the Department of Enforcement 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) – (d) No Change.