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Page 1 of \* 24

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

File No. \* SR 2024 - \* 085

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"/>
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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 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 amend Exchange Rules 1015, 9261, 9341, 9524 and 9830 to allow for video conference hearings before the Office of Hearing Officers and the Exchange Review Council under specified conditions.

**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 \* Muiyiwa Last Name \* Odeniyide

Title \* Director & Associate General Counsel

E-mail \* olumuyiwa.odeniyide@nasdaq.com

Telephone \* (202) 817-7995 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 12/19/2024


(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: 2024.12.19 13:35:43 -05'00'

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 EDFS website.

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

Add Remove View

SR-NASDAQ-2024-085 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-2024-085 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**

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SR-NASDAQ-2024-085 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”)<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 amend Exchange Rules 1015, 9261, 9341, 9524 and 9830 to allow for video conference hearings before the Office of Hearing Officers (“OHO”) and the Exchange Review Council (“ERC”) under specified conditions.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (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.

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

Olumuyiwa Odeniyide  
Associate General Counsel  
Nasdaq, Inc.  
202-817-7995

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

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

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

a. Purpose

The Exchange proposes to harmonize Exchange Rules 1015, 9261, 9341, 9524 and 9830 with changes by the Financial Industry Regulatory Authority, Inc. (“FINRA”) to its Rules 1015, 9261, 9341, 9524 and 9830 that would allow for the use of video conference for reasons in addition to COVID-19. The proposal also deletes expired references to temporary amendments.<sup>3</sup> The Exchange originally filed proposed rule change SR-NASDAQ-2020-076, which allowed 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 COVID-19-related public health risks posed by an in-person hearing.<sup>4</sup> These were extended several times due to the continuing public health risks and logistical challenges related to COVID-19, including whether hearing participants could safely travel and abide by state or local quarantine requirements.<sup>5</sup> The use of high quality, secure and user-friendly video

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<sup>3</sup> See Securities Exchange Act Release No. 96282 (November 9, 2022), 87 FR 68788 (November 16, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2022-059) (temporary amendments expiring on January 31, 2023).

<sup>4</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).

<sup>5</sup> See 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); 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); Securities Exchange Act Release No. 95436 (August 5, 2022), 87 FR 49624 (August 11, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2022-044); Securities Exchange Act Release No. 96282 (November 9, 2022), 87 FR 68788 (November 16, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2022-059).

conference technology in hearings has demonstrated that video is an effective and efficient alternative to in-person hearings.<sup>6</sup>

The Exchange is proposing to make the temporary amendments regarding video conference hearings permanent, with some modifications that would allow for the use of video conference for reasons in addition to COVID-19. The proposed rule change will continue to improve and modernize the Exchange's operations so that parties, panelists, and the Exchange staff may proceed expeditiously by video conference in the event of certain circumstances, including where unforeseen events make appearing in person difficult or impracticable. As described below, impracticability is intended to account for an uncommon situation or extraordinary circumstance. The proposed rule change further promotes efficiency by giving OHO and the ERC authority to act quickly if a future unexpected event impaired their ability to conduct in-person hearings safely.

OHO conducts hearings in disciplinary proceedings and hearings for temporary and permanent cease and desist orders. When orders in disciplinary proceedings are appealed, the ERC holds hearings on oral argument. The ERC also conducts hearings in membership proceedings and eligibility proceedings. Under the proposed rule change, OHO and the ERC's authority to order hearings by video conference would extend beyond the public health risks posed by COVID-19 to other similar situations in which proceeding in person may endanger the health or safety of the participants or would be impracticable. For example, appearing in person may be impracticable in the event of a natural disaster or terrorist attack that caused travel to be cancelled for a period of time. As with the temporary amendments, under the proposed rule change, in-person hearings

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<sup>6</sup> See Securities Exchange Act Release No. 97403 (April 28, 2023), 88 FR 28645 (May 4, 2023) (SR-FINRA-2023-008).

will remain the default method for hearings before OHO and the ERC, and their exercise of authority under the proposed rule change would be discretionary. In-person hearings may take place where safe and appropriate.

#### Evidentiary Hearings

For evidentiary hearings, the proposed rule change would give OHO or the ERC authority to order an evidentiary hearing to occur by video conference, in whole or in part, if OHO or the ERC determines that proceeding in person may endanger the health or safety of the participants or would be impracticable. OHO and the ERC would have such authority on their own. In addition, under the proposed rule change, parties could file a joint motion requesting the hearing to occur, in whole or in part, by video conference based on a showing of good cause. Whether acting on its own or based on a joint motion of the parties, OHO and the ERC would have reasonable discretion to exercise their authority under the proposed rule change. In deciding whether to schedule a hearing by video conference, OHO and the ERC could consider and balance a variety of factors including, for example and without limitation, a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.

#### Oral Argument

The proposed rule change would give the ERC authority to order an oral argument hearing to occur by video conference, in whole or in part, if it determines that proceeding in person may endanger the health or safety of the participants or would be impracticable. The ERC would have such authority on its own. In addition, under the proposed rule change, the ERC would have authority — on its own or on consideration of

a motion by any party — to order oral argument to occur by video conference, in whole or in part, for other reasons (*i.e.* reasons not limited to public health, safety or impracticability). Under such circumstances, an opposing party would have the opportunity to demonstrate that the hearing should proceed in person because proceeding by video conference would materially disadvantage that party. Whether a party has shown material disadvantage would depend on the facts and circumstances.

Considerations may include, for example and without limitation, case complexity, the issues on appeal, and whether the respondent is pro se and desires to appear in person. Whether acting on its own or based on a motion of a party, the ERC would have reasonable discretion to exercise its authority under the proposed rule change. In deciding whether to order an oral argument hearing by video conference, the ERC could consider and balance a variety of factors including, for example and without limitation, a hearing participant's individual health concerns, access to video conference technology, whether a party has delayed or refused to appear in person, and whether proceeding by video conference would materially disadvantage any party.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</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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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

to provide greater harmonization between the Exchange rules and FINRA rules of similar purpose,<sup>9</sup> resulting in less burdensome and more efficient regulatory compliance. The proposal also deletes expired references to temporary amendments.

The Exchange believes that the proposed rule change protects investors and the public interest by permitting the use of broadly available technology to allow hearings to proceed by video conference under certain circumstances. The Exchange's disciplinary and eligibility proceedings and other review processes serve a critical role in providing investor protection and maintaining fair and orderly markets by, for example, sanctioning misconduct and preventing further customer harm by members and associated persons. The proposed rule change would encourage the prompt resolution of these cases while preserving a fair process.

The proposed rule change promotes efficiency by permitting hearings to occur by video conference in situations where the hearings would otherwise be postponed for an uncertain period of time. As discussed, COVID-19 necessitated the Exchange to propose the temporary amendments, which were extended due to the continuing health risks of COVID-19, as well as limitations on travel, quarantine requirements, and other logistical challenges to safely conducting hearings in person. The proposed rule change further promotes efficiency by giving OHO and the ERC authority to act quickly if a future unexpected event impaired their ability to conduct in-person hearings safely.

The proposed rule change also serves to provide a fair procedure for the disciplining of members and persons associated with members by allowing hearings to

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<sup>9</sup> See Securities Exchange Act Release No. 97403 (April 28, 2023), 88 FR 28645 (May 4, 2023) (SR-FINRA-2023-008).



proceed by video conference not only due to public health or safety reasons, but also at a party or the parties' request for reasons particular to them. The Adjudicator could allow a hearing to proceed by video conference in the exercise of reasonable discretion and subject to procedural safeguards that ensure fairness.

Thus, the proposed rule change represents a significant step toward modernizing the Exchange's procedures in a manner that preserves in-person hearings, but allows for the use of high quality, secure and user-friendly video conference technology under certain circumstances.

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 allow for the use of video conference for reasons in addition to COVID-19 where unforeseen events make appearing in person difficult or impracticable. In its filing, FINRA provided an economic impact assessment analyzing the potential impacts of the proposed rule change, including anticipated costs, benefits, and distributional and competitive effects.<sup>10</sup>

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.

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<sup>10</sup> See Securities Exchange Act Release No. 97403 (April 28, 2023), 88 FR 28645 (May 4, 2023) (SR-FINRA-2023-008).

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>11</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>12</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.

Furthermore, Rule 19b-4(f)(6)(iii)<sup>13</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.

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>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

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>14</sup>

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.

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<sup>14</sup> See Securities Exchange Act Release No. 97403 (April 28, 2023), 88 FR 28645 (May 4, 2023) (SR-FINRA-2023-008).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2024-085)

December \_\_, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Exchange Rules 1015, 9261, 9341, 9524 and 9830 to Permit Hearings by Video Conference

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 December 19, 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 amend Exchange Rules 1015, 9261, 9341, 9524 and 9830 to allow for video conference hearings before the Office of Hearing Officers (“OHO”) and the Exchange Review Council (“ERC”) under specified conditions.

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.

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

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

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

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

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

1. Purpose

The Exchange proposes to harmonize Exchange Rules 1015, 9261, 9341, 9524 and 9830 with changes by the Financial Industry Regulatory Authority, Inc. (“FINRA”) to its Rules 1015, 9261, 9341, 9524 and 9830 that would allow for the use of video conference for reasons in addition to COVID-19. The proposal also deletes expired references to temporary amendments.<sup>3</sup> The Exchange originally filed proposed rule change SR-NASDAQ-2020-076, which allowed 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 COVID-19-related public health risks posed by an in-person hearing.<sup>4</sup> These were extended several times due to the continuing public health risks and logistical challenges related to COVID-19, including whether hearing participants could safely travel and abide by state or local

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<sup>3</sup> See Securities Exchange Act Release No. 96282 (November 9, 2022), 87 FR 68788 (November 16, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2022-059) (temporary amendments expiring on January 31, 2023).

<sup>4</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).

quarantine requirements.<sup>5</sup> The use of high quality, secure and user-friendly video conference technology in hearings has demonstrated that video is an effective and efficient alternative to in-person hearings.<sup>6</sup>

The Exchange is proposing to make the temporary amendments regarding video conference hearings permanent, with some modifications that would allow for the use of video conference for reasons in addition to COVID-19. The proposed rule change will continue to improve and modernize the Exchange's operations so that parties, panelists, and the Exchange staff may proceed expeditiously by video conference in the event of certain circumstances, including where unforeseen events make appearing in person difficult or impracticable. As described below, impracticability is intended to account for an uncommon situation or extraordinary circumstance. The proposed rule change further promotes efficiency by giving OHO and the ERC authority to act quickly if a future unexpected event impaired their ability to conduct in-person hearings safely.

OHO conducts hearings in disciplinary proceedings and hearings for temporary and permanent cease and desist orders. When orders in disciplinary proceedings are appealed, the ERC holds hearings on oral argument. The ERC also conducts hearings in

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<sup>5</sup> See 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); 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); Securities Exchange Act Release No. 95436 (August 5, 2022), 87 FR 49624 (August 11, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2022-044); Securities Exchange Act Release No. 96282 (November 9, 2022), 87 FR 68788 (November 16, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2022-059).

<sup>6</sup> See Securities Exchange Act Release No. 97403 (April 28, 2023), 88 FR 28645 (May 4, 2023) (SR-FINRA-2023-008).

membership proceedings and eligibility proceedings. Under the proposed rule change, OHO and the ERC's authority to order hearings by video conference would extend beyond the public health risks posed by COVID-19 to other similar situations in which proceeding in person may endanger the health or safety of the participants or would be impracticable. For example, appearing in person may be impracticable in the event of a natural disaster or terrorist attack that caused travel to be cancelled for a period of time. As with the temporary amendments, under the proposed rule change, in-person hearings will remain the default method for hearings before OHO and the ERC, and their exercise of authority under the proposed rule change would be discretionary. In-person hearings may take place where safe and appropriate.

#### Evidentiary Hearings

For evidentiary hearings, the proposed rule change would give OHO or the ERC authority to order an evidentiary hearing to occur by video conference, in whole or in part, if OHO or the ERC determines that proceeding in person may endanger the health or safety of the participants or would be impracticable. OHO and the ERC would have such authority on their own. In addition, under the proposed rule change, parties could file a joint motion requesting the hearing to occur, in whole or in part, by video conference based on a showing of good cause. Whether acting on its own or based on a joint motion of the parties, OHO and the ERC would have reasonable discretion to exercise their authority under the proposed rule change. In deciding whether to schedule a hearing by video conference, OHO and the ERC could consider and balance a variety of factors including, for example and without limitation, a hearing participant's individual health

concerns and access to the connectivity and technology necessary to participate in a video conference hearing.

#### Oral Argument

The proposed rule change would give the ERC authority to order an oral argument hearing to occur by video conference, in whole or in part, if it determines that proceeding in person may endanger the health or safety of the participants or would be impracticable. The ERC would have such authority on its own. In addition, under the proposed rule change, the ERC would have authority — on its own or on consideration of a motion by any party — to order oral argument to occur by video conference, in whole or in part, for other reasons (*i.e.* reasons not limited to public health, safety or impracticability). Under such circumstances, an opposing party would have the opportunity to demonstrate that the hearing should proceed in person because proceeding by video conference would materially disadvantage that party. Whether a party has shown material disadvantage would depend on the facts and circumstances. Considerations may include, for example and without limitation, case complexity, the issues on appeal, and whether the respondent is pro se and desires to appear in person. Whether acting on its own or based on a motion of a party, the ERC would have reasonable discretion to exercise its authority under the proposed rule change. In deciding whether to order an oral argument hearing by video conference, the ERC could consider and balance a variety of factors including, for example and without limitation, a hearing participant's individual health concerns, access to video conference technology, whether a party has delayed or refused to appear in person, and whether proceeding by video conference would materially disadvantage any party.



## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</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>9</sup> resulting in less burdensome and more efficient regulatory compliance. The proposal also deletes expired references to temporary amendments.

The Exchange believes that the proposed rule change protects investors and the public interest by permitting the use of broadly available technology to allow hearings to proceed by video conference under certain circumstances. The Exchange's disciplinary and eligibility proceedings and other review processes serve a critical role in providing investor protection and maintaining fair and orderly markets by, for example, sanctioning misconduct and preventing further customer harm by members and associated persons. The proposed rule change would encourage the prompt resolution of these cases while preserving a fair process.

The proposed rule change promotes efficiency by permitting hearings to occur by video conference in situations where the hearings would otherwise be postponed for an

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See Securities Exchange Act Release No. 97403 (April 28, 2023), 88 FR 28645 (May 4, 2023) (SR-FINRA-2023-008).

uncertain period of time. As discussed, COVID-19 necessitated the Exchange to propose the temporary amendments, which were extended due to the continuing health risks of COVID-19, as well as limitations on travel, quarantine requirements, and other logistical challenges to safely conducting hearings in person. The proposed rule change further promotes efficiency by giving OHO and the ERC authority to act quickly if a future unexpected event impaired their ability to conduct in-person hearings safely.

The proposed rule change also serves to provide a fair procedure for the disciplining of members and persons associated with members by allowing hearings to proceed by video conference not only due to public health or safety reasons, but also at a party or the parties' request for reasons particular to them. The Adjudicator could allow a hearing to proceed by video conference in the exercise of reasonable discretion and subject to procedural safeguards that ensure fairness.

Thus, the proposed rule change represents a significant step toward modernizing the Exchange's procedures in a manner that preserves in-person hearings, but allows for the use of high quality, secure and user-friendly video conference technology under certain circumstances.

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 allow for the use of video conference for reasons in addition to COVID-19 where unforeseen events make appearing in person difficult or impracticable. In its filing, FINRA provided an economic impact assessment analyzing the potential

impacts of the proposed rule change, including anticipated costs, benefits, and distributional and competitive effects.<sup>10</sup>

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>11</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>12</sup>

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>10</sup> See Securities Exchange Act Release No. 97403 (April 28, 2023), 88 FR 28645 (May 4, 2023) (SR-FINRA-2023-008).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</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.

#### 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](mailto:rule-comments@sec.gov). Please include file number SR-NASDAQ-2024-085 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-2024-085. 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-2024-085 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.<sup>13</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>13</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**THE NASDAQ STOCK MARKET LLC RULES**

\* \* \* \* \*

**General 3 Membership and Access**

\* \* \* \* \*

**1015. Review by Exchange Review Council**

(a) through (e) No Change.

(f) Hearing

...

(5) Video Conference Hearing

Upon a determination that proceeding in person may endanger the health or safety of the participants or would be impracticable, or upon consideration of a joint motion of the Parties for good cause shown[consideration of the current public health risks presented by an in person hearing], the Exchange Review Council or Subcommittee may, in the exercise of reasonable discretion, order the hearing to [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**

\* \* \* \* \*

**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 a determination that proceeding in person may endanger the health or safety of the participants or would be impracticable, or upon consideration of a joint motion of the Parties for good cause shown[consideration of the current public health risks presented by an in-person

hearing], the Chief Hearing Officer or Deputy Chief Hearing Officer may, in the exercise of reasonable discretion, order[on a temporary basis, determine that] the hearing [shall]to be conducted, in whole or in part, by video conference.

(c) No Change.

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### 9341. Oral Argument

(a) through (c) No Change.

(d) Mode of Oral Argument [Attendance Required]

The Parties shall make oral arguments before the Subcommittee or, if applicable, the Extended Proceeding Committee. Unless otherwise agreed to by all of the Parties, all Panelists comprising the Subcommittee or, if applicable, the Extended Proceeding Committee shall [be present for]participate in the oral argument. The Exchange Review Council or Subcommittee may, in the exercise of reasonable discretion, order oral argument by video conference, in whole or in part, (i) upon a determination that proceeding in person may endanger the health or safety of the participants or would be impracticable; or (ii) upon a determination, on its own or on motion of a Party, that oral argument should occur by video conference for other reasons, unless any Party demonstrates that conducting oral argument by video conference would materially disadvantage that Party.

(e) through (f) No Change.

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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]a determination that proceeding in person may endanger the health or

safety of the participants or would be impracticable, or upon consideration of a joint motion of the Parties for good cause shown, the Exchange Review Council or Subcommittee may, in the exercise of reasonable discretion, order the hearing to 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 a determination that proceeding in person may endanger the health or safety of the participants or would be impracticable, or upon consideration of a joint motion of the Parties for good cause shown, the Chief Hearing Officer or Deputy Chief Hearing Officer may, in the exercise of reasonable discretion, order the hearing to [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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