

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 20

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

File No. \* SR 2023 - \* 31

Amendment No. (req. for Amendments \*)

Filing by Nasdaq PHLX 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"/>
--	---	--	--	--	---

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)	Submit with link to Prefiling or Request for Waiver option
-----------------------------------	--	--	--	--

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 Proposed Rule Change Regarding a Stockholders Agreement By and Among Nasdaq, Inc., Adenza Parent, LP, and the Other Parties Thereto

**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 \* Sun      Last Name \* Kim

Title \* Associate General Counsel

E-mail \* Sun.Kim@nasdaq.com

Telephone \* (646) 420-7816      Fax


**Signature**

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

Date 07/28/2023      (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: 2023.07.28 11:08:20 -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 EDFS website.

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

Add Remove View

SR-Phlx-2023-31 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 \***

Add Remove View

SR-Phlx-2023-31 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 \***

Add Remove View

--

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**

Add Remove View

--

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**

Add Remove View

--

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**

Add Remove View

--

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

**Exhibit 5 - Proposed Rule Text**

Add Remove View

--

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

Add Remove View

--

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) Nasdaq PHLX LLC (the “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 proposed rule change regarding a stockholders’ agreement by and among the Exchange’s parent corporation, Nasdaq, Inc. (“Nasdaq”), Adenza Parent, LP, a Delaware limited partnership (“Seller”), and the other parties thereto (“Stockholders’ Agreement”). The Stockholders’ Agreement will be implemented upon closing under the Merger Agreement (as defined below).

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 Board of Directors of Nasdaq (“Nasdaq Board”) approved the terms of the Stockholders’ Agreement on June 9, 2023. The filing of the proposed rule change was approved by the Board of Directors of the Exchange (the “Exchange Board”) on July 12, 2023. No other action is necessary for the filing of the rule change.

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

Sun Kim  
Associate General Counsel  
Nasdaq, Inc.  
646-420-7816

---

<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

On June 10, 2023, Nasdaq entered into an Agreement and Plan of Merger (the “Merger Agreement”) by and among Nasdaq, Argus Merger Sub 1, Inc., a Delaware corporation and a direct wholly owned subsidiary of Nasdaq, Argus Merger Sub 2, LLC, a Delaware limited liability company and a direct wholly owned subsidiary of Nasdaq, Adenza Holdings, Inc., a Delaware corporation (“Adenza”), and Seller. Pursuant to the Merger Agreement, and upon the terms and subject to the conditions therein, Nasdaq will acquire 100% of the stock of Adenza (the “Transaction”). As a result of the Transaction, Seller is expected to hold, at closing, approximately 15% of the outstanding Nasdaq common stock based upon the outstanding shares of Nasdaq common stock as of June 9, 2023.<sup>3</sup> The shares to be held by Seller will be subject to Article Fourth of Nasdaq’s Amended and Restated Certificate of Incorporation, which provides that no person who beneficially owns shares of common stock or preferred stock of Nasdaq in excess of 5% of the then-outstanding securities generally entitled to vote may vote the shares in excess of 5%. This limitation mitigates the potential for any Nasdaq shareholder to exercise undue control over the operations of Nasdaq’s self-regulatory subsidiaries (including the Exchange), and facilitates the self-regulatory subsidiaries’ and the Commission’s ability to carry out their regulatory obligations under the Act.

---

<sup>3</sup> A copy of the Merger Agreement and a description of its terms were filed by Nasdaq on Form 8-K on June 12, 2023 and are available at: <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001120193/000119312523164839/d476077d8k.htm>.

Adenza and Seller are affiliates of certain funds managed by Thoma Bravo, L.P., a Delaware limited partnership (“Thoma Bravo”).<sup>4</sup> The Merger Agreement contemplates that, at the closing, Nasdaq, Seller and Thoma Bravo will enter into the Stockholders’ Agreement. The Stockholders’ Agreement provides that, among other things, Thoma Bravo will be entitled to propose one individual reasonably acceptable to Nasdaq’s Nominating & Governance Committee for nomination as director for election to the Nasdaq Board (“Board Designee”), and such right will exist for so long as Thoma Bravo, together with its controlled affiliates (including Seller), continue to beneficially own at least 10% of the shares of Nasdaq common stock outstanding as of the closing date. Nasdaq will: (i) include the Board Designee as a nominee to the Nasdaq Board on each slate of nominees for election to the Nasdaq Board proposed by management of Nasdaq, (ii) recommend the election of the Board Designee to the stockholders of Nasdaq and (iii) without limiting the foregoing, otherwise use its reasonable best efforts (which shall include the solicitation of proxies) to cause the Board Designee to be elected to the Nasdaq Board.

The Stockholders’ Agreement relates solely to the Nasdaq Board, and not to the boards of any of its subsidiaries, including the Exchange Board. Nevertheless, the provisions of the Stockholders’ Agreement described above could be considered a proposed rule change of a subsidiary that is a self-regulatory organization (“SRO”), if the provisions were viewed as potentially impacting the governance of an SRO in its capacity as wholly-owned subsidiary of Nasdaq. Accordingly, the governing boards of directors

---

<sup>4</sup> Seller owns all of the issued and outstanding capital stock of Adenza. Both Seller and Adenza are owned by Thoma Bravo.

of the Exchange and its affiliated SROs have each reviewed the proposed change and determined that it should be filed with the Commission.<sup>5</sup>

It is expected that the Board Designee, like the other directors of the Nasdaq Board, would be nominated by the Nominating & Governance Committee, the composition of which is subject to the independence requirements of the Nasdaq By-Laws and NSM Rule 5605.<sup>6</sup> The Board Designee must then be elected by the stockholders of Nasdaq, like the other directors of the Nasdaq Board. The Nasdaq Board is currently composed of 11 directors and is expected to increase to 12 directors upon the closing of the Transaction. Thus, the Board Designee would represent a small percentage (approximately 8.3%) of the Nasdaq Board.

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)(1) of the Act,<sup>8</sup> in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its

---

<sup>5</sup> The Exchange, Nasdaq BX, Inc. (“BX”), Nasdaq GEMX, LLC (“GEMX”), Nasdaq ISE, LLC (“ISE”), Nasdaq MRX, LLC (“MRX”), The Nasdaq Stock Market LLC (“NSM”), Boston Stock Exchange Clearing Corporation (“BSECC”), and Stock Clearing Corporation of Philadelphia (“SCCP”) are each submitting this filing pursuant to Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>6</sup> Section 4.13 of the Nasdaq By-Laws provide that the Nominating & Governance Committee shall be appointed annually by the Nasdaq Board and shall consist of two or more directors, each of whom shall be an independent director within the meaning of the rules of NSM. The number of Non-Industry Directors (i.e, directors without material ties to the securities industry) on the Nominating & Governance Committee shall equal or exceed the number of Industry Directors and at least two members of the committee shall be Public Directors (i.e., directors who have no material business relationship with a broker or dealer, Nasdaq or its affiliates, or FINRA). NSM Rule 5605, which governs Nasdaq as a company whose securities are listed on NSM, requires Nominating & Governance Committee members to satisfy the definition of “independence” in NSM Rule 5605 and IM-5605 and to otherwise be deemed independent by the Nasdaq Board.

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

<sup>8</sup> 15 U.S.C. 78f(b)(1).

participants, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposal related to the Stockholders' Agreement would not impact the Exchange's ability to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act. In particular, the proposed changes would not alter the limitations on voting and ownership set forth in Article Fourth of Nasdaq's Amended and Restated Certificate of Incorporation, and so the proposed changes would not enable a person to exercise undue control over the operations of Nasdaq's self-regulatory subsidiaries or to restrict the ability of the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Act. Further, as discussed above, it is expected that the Board Designee, like the other directors of the Nasdaq Board, would be nominated by the Nominating & Governance Committee, whose members are subject to the independence requirements of the Nasdaq By-Laws and NSM Rule 5605. Further, the Board Designee must then be elected by the stockholders of Nasdaq, like the other directors of the Nasdaq Board. The Nasdaq Board is currently composed of 11 directors and is expected to increase to 12 directors upon the closing of the Transaction. Thus, the Board Designee would represent a small percentage (approximately 8.3%) of the Nasdaq Board.

The Exchange also notes that the proposed rule change is substantially similar to prior proposals by the Exchange or its affiliated SROs related to Nasdaq stockholders' agreements that gave similar rights to recommend Nasdaq Board designees.<sup>9</sup> As such,

---

<sup>9</sup> See Securities Exchange Act Release No. 57099 (January 4, 2008), 73 FR 1901 (January 10, 2008) (SR-NASDAQ-2008-002) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Nasdaq Stockholders' Agreement Between the Nasdaq Stock Market, Inc. and Borse Dubai Limited). See also Securities Exchange Act Release No. 63786 (January 27, 2011),

the Exchange does not believe that its proposal raises any new or novel issues not already considered by the Commission.

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

Because the proposed rule change is related solely to Thoma Bravo's right to nominate the Board Designee to the Nasdaq Board pursuant to the Stockholders' Agreement and not to the operations of the Exchange, 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.

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>10</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>11</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.

---

76 FR 6168 (February 3, 2011) (SR-NASDAQ-2011-013, SR-PHLX-2011-08, SR-BX-2011-004) (Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Relating to a Stockholders' Agreement Between the NASDAQ OMX Group, Inc. and Investor AB).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).



The proposed rule change does not significantly affect the protection of investors or the public interest because it is expected that the Board Designee, like the other directors of the Nasdaq Board, would be nominated by a body that is required to meet the independence requirements under the Nasdaq By-Laws and NSM Rule 5605, after which the Board Designee must be elected by the stockholders of Nasdaq. As stated above, the Nasdaq Board is currently composed of 11 directors and is expected to increase to 12 directors upon the closing of the Transaction. Thus, the Board Designee would represent a small percentage (approximately 8.3%) of the Nasdaq Board.

Moreover, the proposed rule change would be subject to the limitations on voting and ownership set forth in Article Fourth of Nasdaq's Amended and Restated Certificate of Incorporation, which provides that no person who beneficially owns shares of common stock or preferred stock of Nasdaq in excess of 5% of the then-outstanding securities generally entitled to vote may vote the shares in excess of 5%. As discussed above, these limitations mitigate the potential for any Nasdaq shareholder to exercise undue control over the operations Nasdaq's self-regulatory subsidiaries (including the Exchange), and facilitate the self-regulatory subsidiaries' and the Commission's ability to carry out their regulatory obligations under the Act. Under this proposal, the shares to be held by the Seller will be subject to these limitations, and therefore would not enable a person to exercise undue control over the operations of Nasdaq's self-regulatory subsidiaries or to restrict the ability of the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Act.

In addition, the proposed rule change does not impose any significant burden on competition, as it relates solely to Thoma Bravo's right to nominate the Board Designee

to the Nasdaq Board pursuant to the Stockholders' Agreement and not to the operations of the Exchange. As noted above, the proposed rule change is substantially similar to prior proposals by the Exchange or its SRO affiliates, and thus the Exchange does not believe that its proposal raises any new or novel issues not already considered by the Commission.<sup>12</sup>

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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii). The parties to the Merger Agreement expect all regulatory actions necessary for the closing of the transactions contemplated under the Merger Agreement to be completed as early as September 2023.

---

<sup>12</sup> See supra note 9.

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

Accordingly, waiver of the operative delay would ensure that the filing is effective and therefore does not delay the closing of the transactions contemplated under the Merger Agreement.

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

The proposal is similar to SR-NASDAQ-2008-002, SR-NASDAQ-2011-013, SR-PHLX-2011-08, and SR-BX-2011-004.

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.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2023-31)

August \_\_, 2023

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding a Stockholders' Agreement By and Among Nasdaq, Inc., Adenza Parent, LP, and the Other Parties Thereto

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 28, 2023, Nasdaq PHLX LLC (the "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 is filing a proposed rule change regarding a stockholders' agreement by and among the Exchange's parent corporation, Nasdaq, Inc. ("Nasdaq"), Adenza Parent, LP, a Delaware limited partnership ("Seller"), and the other parties thereto ("Stockholders' Agreement"). The Stockholders' Agreement will be implemented upon closing under the Merger Agreement (as defined below).

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

---

<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

On June 10, 2023, Nasdaq entered into an Agreement and Plan of Merger (the “Merger Agreement”) by and among Nasdaq, Argus Merger Sub 1, Inc., a Delaware corporation and a direct wholly owned subsidiary of Nasdaq, Argus Merger Sub 2, LLC, a Delaware limited liability company and a direct wholly owned subsidiary of Nasdaq, Adenza Holdings, Inc., a Delaware corporation (“Adenza”), and Seller. Pursuant to the Merger Agreement, and upon the terms and subject to the conditions therein, Nasdaq will acquire 100% of the stock of Adenza (the “Transaction”). As a result of the Transaction, Seller is expected to hold, at closing, approximately 15% of the outstanding Nasdaq common stock based upon the outstanding shares of Nasdaq common stock as of June 9, 2023.<sup>3</sup> The shares to be held by Seller will be subject to Article Fourth of Nasdaq’s Amended and Restated Certificate of Incorporation, which provides that no person who beneficially owns shares of common stock or preferred stock of Nasdaq in excess of 5%

---

<sup>3</sup> A copy of the Merger Agreement and a description of its terms were filed by Nasdaq on Form 8-K on June 12, 2023 and are available at: <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001120193/000119312523164839/d476077d8k.htm>.

of the then-outstanding securities generally entitled to vote may vote the shares in excess of 5%. This limitation mitigates the potential for any Nasdaq shareholder to exercise undue control over the operations of Nasdaq's self-regulatory subsidiaries (including the Exchange), and facilitates the self-regulatory subsidiaries' and the Commission's ability to carry out their regulatory obligations under the Act.

Adenza and Seller are affiliates of certain funds managed by Thoma Bravo, L.P., a Delaware limited partnership ("Thoma Bravo").<sup>4</sup> The Merger Agreement contemplates that, at the closing, Nasdaq, Seller and Thoma Bravo will enter into the Stockholders' Agreement. The Stockholders' Agreement provides that, among other things, Thoma Bravo will be entitled to propose one individual reasonably acceptable to Nasdaq's Nominating & Governance Committee for nomination as director for election to the Nasdaq Board ("Board Designee"), and such right will exist for so long as Thoma Bravo, together with its controlled affiliates (including Seller), continue to beneficially own at least 10% of the shares of Nasdaq common stock outstanding as of the closing date. Nasdaq will: (i) include the Board Designee as a nominee to the Nasdaq Board on each slate of nominees for election to the Nasdaq Board proposed by management of Nasdaq, (ii) recommend the election of the Board Designee to the stockholders of Nasdaq and (iii) without limiting the foregoing, otherwise use its reasonable best efforts (which shall include the solicitation of proxies) to cause the Board Designee to be elected to the Nasdaq Board.

The Stockholders' Agreement relates solely to the Nasdaq Board, and not to the boards of any of its subsidiaries, including the Exchange Board. Nevertheless, the

---

<sup>4</sup> Seller owns all of the issued and outstanding capital stock of Adenza. Both Seller and Adenza are owned by Thoma Bravo.

provisions of the Stockholders' Agreement described above could be considered a proposed rule change of a subsidiary that is a self-regulatory organization ("SRO"), if the provisions were viewed as potentially impacting the governance of an SRO in its capacity as wholly-owned subsidiary of Nasdaq. Accordingly, the governing boards of directors of the Exchange and its affiliated SROs have each reviewed the proposed change and determined that it should be filed with the Commission.<sup>5</sup>

It is expected that the Board Designee, like the other directors of the Nasdaq Board, would be nominated by the Nominating & Governance Committee, the composition of which is subject to the independence requirements of the Nasdaq By-Laws and NSM Rule 5605.<sup>6</sup> The Board Designee must then be elected by the stockholders of Nasdaq, like the other directors of the Nasdaq Board. The Nasdaq Board is currently composed of 11 directors and is expected to increase to 12 directors upon the closing of the Transaction. Thus, the Board Designee would represent a small percentage (approximately 8.3%) of the Nasdaq Board.

---

<sup>5</sup> The Exchange, Nasdaq BX, Inc. ("BX"), Nasdaq GEMX, LLC ("GEMX"), Nasdaq ISE, LLC ("ISE"), Nasdaq MRX, LLC ("MRX"), The Nasdaq Stock Market LLC ("NSM"), Boston Stock Exchange Clearing Corporation ("BSECC"), and Stock Clearing Corporation of Philadelphia ("SCCP") are each submitting this filing pursuant to Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>6</sup> Section 4.13 of the Nasdaq By-Laws provide that the Nominating & Governance Committee shall be appointed annually by the Nasdaq Board and shall consist of two or more directors, each of whom shall be an independent director within the meaning of the rules of NSM. The number of Non-Industry Directors (i.e., directors without material ties to the securities industry) on the Nominating & Governance Committee shall equal or exceed the number of Industry Directors and at least two members of the committee shall be Public Directors (i.e., directors who have no material business relationship with a broker or dealer, Nasdaq or its affiliates, or FINRA). NSM Rule 5605, which governs Nasdaq as a company whose securities are listed on NSM, requires Nominating & Governance Committee members to satisfy the definition of "independence" in NSM Rule 5605 and IM-5605 and to otherwise be deemed independent by the Nasdaq Board.

## 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)(1) of the Act,<sup>8</sup> in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its participants, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposal related to the Stockholders' Agreement would not impact the Exchange's ability to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act. In particular, the proposed changes would not alter the limitations on voting and ownership set forth in Article Fourth of Nasdaq's Amended and Restated Certificate of Incorporation, and so the proposed changes would not enable a person to exercise undue control over the operations of Nasdaq's self-regulatory subsidiaries or to restrict the ability of the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Act. Further, as discussed above, it is expected that the Board Designee, like the other directors of the Nasdaq Board, would be nominated by the Nominating & Governance Committee, whose members are subject to the independence requirements of the Nasdaq By-Laws and NSM Rule 5605. Further, the Board Designee must then be elected by the stockholders of Nasdaq, like the other directors of the Nasdaq Board. The Nasdaq Board is currently composed of 11 directors and is expected to increase to 12 directors upon the closing of

---

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

<sup>8</sup> 15 U.S.C. 78f(b)(1).



the Transaction. Thus, the Board Designee would represent a small percentage (approximately 8.3%) of the Nasdaq Board.

The Exchange also notes that the proposed rule change is substantially similar to prior proposals by the Exchange or its affiliated SROs related to Nasdaq stockholders' agreements that gave similar rights to recommend Nasdaq Board designees.<sup>9</sup> As such, the Exchange does not believe that its proposal raises any new or novel issues not already considered by the Commission.

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

Because the proposed rule change is related solely to Thoma Bravo's right to nominate the Board Designee to the Nasdaq Board pursuant to the Stockholders' Agreement and not to the operations of the Exchange, 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.

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,

---

<sup>9</sup> See Securities Exchange Act Release No. 57099 (January 4, 2008), 73 FR 1901 (January 10, 2008) (SR-NASDAQ-2008-002) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Nasdaq Stockholders' Agreement Between the Nasdaq Stock Market, Inc. and Borse Dubai Limited). See also Securities Exchange Act Release No. 63786 (January 27, 2011), 76 FR 6168 (February 3, 2011) (SR-NASDAQ-2011-013, SR-PHLX-2011-08, SR-BX-2011-004) (Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Relating to a Stockholders' Agreement Between the NASDAQ OMX Group, Inc. and Investor AB).

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>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</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.

#### 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-Phlx-2023-31 on the subject line.

---

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</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.

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-Phlx-2023-31. 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-Phlx-2023-31 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>12</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

---

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