

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-94707)

April 12, 2022

Order Granting Application by The Nasdaq Stock Market LLC and Five Affiliated National Securities Exchanges for Exemption, Pursuant to Section 36(a) of the Exchange Act, from the Rule Filing Requirements of Section 19(b) of the Exchange Act with Respect to Certain Rules Incorporated by Reference

The Nasdaq Stock Market LLC (“Nasdaq”) and its affiliated national securities exchanges Nasdaq PHLX LLC (“Phlx”), Nasdaq BX, Inc. (“BX”), Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”), and Nasdaq MRX, LLC (“MRX”) (each a “Nasdaq Exchange” and collectively the “Nasdaq Exchanges”) have filed with the Securities and Exchange Commission (the “Commission” or “SEC”) an application¹ for exemption under Section 36(a) of the Securities Exchange Act of 1934 (“Exchange Act”)² and Rule 0-12 thereunder³ from the rule filing requirements of Section 19(b) of the Exchange Act⁴ with respect to the rules of the Nasdaq Exchanges relating to arbitration. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

¹ See Letter from Stephen Matthews, Principal Associate General Counsel, Nasdaq, to J. Matthew DeLesDernier, Assistant Secretary, SEC, dated February 12, 2021 (“Exemptive Request”).

² 15 U.S.C. 78mm.

³ 17 CFR 240.0-12 (Commission procedures for filing applications for orders for exemptive relief under Section 36 of the Exchange Act).

⁴ 15 U.S.C. 78s(b).

The Nasdaq Exchanges have requested that the Commission: (i) grant Nasdaq an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to rules on arbitration in the “General 6” section of Nasdaq’s rulebook (the “General 6 Rules”) effected solely by virtue of changes to rules on arbitration in the Rule 12000 Series and Rule 13000 Series of the Financial Industry Regulatory Authority, Inc. (“FINRA”) Manual (Code of Arbitration Procedures for Customer Disputes and Code of Arbitration Procedures for Industry Disputes) (“FINRA Arbitration Rules”) that are incorporated by reference into the General 6 Rules; and (ii) grant the remaining Nasdaq Exchanges an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to their rules on arbitration that are effected solely by virtue of a change to the General 6 Rules that are incorporated into the remaining Nasdaq Exchanges’ rules by reference. Specifically, the Nasdaq Exchanges request that they be permitted to incorporate by reference changes made to the FINRA Arbitration Rules and Nasdaq General 6 Rules (as applicable) that are incorporated by reference into the Nasdaq Exchanges’ rules without the need for each Nasdaq Exchange to separately file, pursuant to Section 19(b) of the Exchange Act, a proposed rule change similar to the one filed by FINRA or Nasdaq (as applicable). The Nasdaq Exchanges believe that these exemptions are appropriate because they will promote consistency among the Nasdaq Exchanges’ rules pertaining to arbitration, which are not trading rules.⁵

⁵ Exemptive Request, *supra* note 1, at 2-3. An SRO wishing to incorporate rules of another SRO by reference may submit a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, if, among other things, the rules to be incorporated are categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration). See Exchange Act Release No. 49260 (Feb. 17, 2004), 69 FR 8500 (Feb. 24, 2004).

As a condition of the requested exemption, the Nasdaq Exchanges have agreed to provide written notice to their members whenever a change is proposed to FINRA Arbitration Rules or Nasdaq General 6 Rules (as applicable) that are incorporated by reference into the rules of the Nasdaq Exchanges.⁶ Such notice will alert the Nasdaq Exchanges' members to the proposed FINRA or Nasdaq rule change and give them an opportunity to comment on the proposal.⁷ The Nasdaq Exchanges will similarly inform members in writing when the Commission approves any such proposed changes.⁸

The Commission has issued exemptions similar to the Nasdaq Exchanges' request.⁹ In granting one such exemption in 2010, the Commission repeated an earlier Commission statement that it would consider similar future exemption requests from other self-regulatory organizations ("SROs"), provided that:

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has

⁶ The Nasdaq Exchanges will provide such notice via a posting on the same website location where they post their own rule filings pursuant to and within the timeframe required by Rule 19b-4(1) under the Exchange Act. The website posting will include a link to the location on Nasdaq's website where the applicable proposed rule change is posted. Exemptive Request, *supra* note 1, at 3 & n.7.

⁷ Exemptive Request, *supra* note 1, at 3.

⁸ *Id.*

⁹ *See, e.g.*, Release No. 34-83040 (Apr. 12, 2018), 83 FR 17198 (Apr. 18, 2018) (order granting MIA X PEARL, LLC, an exemption under Section 36(a) of the Exchange Act from the rule filing requirements of Section 19(b) of the Exchange Act with respect to certain of its rules incorporating by reference rules of the Miami International Securities Exchange, LLC); Release No. 34-61534 (Feb. 18, 2010), 75 FR 8760 (Feb. 25, 2010) (order granting BATS Exchange, Inc., an exemption under Section 36(a) of the Exchange Act from the rule filing requirements of Section 19(b) of the Exchange Act with respect to certain of its rules incorporating by reference rules of the Chicago Board Options Exchange, Incorporated, Financial Industry Regulatory Authority, Inc., and the New York Stock Exchange, LLC) ("BATS Order").

complied with the procedural requirements set forth in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0-12 under the Exchange Act;

- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and
- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.¹⁰

The Commission believes that the Nasdaq Exchanges have satisfied each of these conditions. The Commission also believes that granting the Nasdaq Exchanges an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of Commission and exchange resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.¹¹ The Commission therefore finds it appropriate in the public interest, and consistent with the protection of investors, to exempt the Nasdaq Exchanges from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described rules they have incorporated by reference.

Accordingly, it is ordered, pursuant to Section 36 of the Exchange Act,¹² that the Nasdaq Exchanges are exempt from the rule filing requirements of Section 19(b) of the Exchange Act with respect to changes to their rules on arbitration resulting solely from changes made to the FINRA Arbitration Rules or the Nasdaq General 6 Rules (as applicable) that are incorporated by reference into the Nasdaq Exchanges' rules without the need for each Nasdaq Exchange to

¹⁰ See Release No. 34-83040, supra note 9, at 75 FR 17199 (footnotes omitted).

¹¹ Id. at 75 FR 17199 & n.15.

¹² 15 U.S.C. 78mm.

separately file, pursuant to Section 19(b) of the Exchange Act, a proposed rule change similar to the one filed by FINRA or Nasdaq, provided that the Nasdaq Exchanges promptly provide written notice to their members whenever a change is proposed to the FINRA Arbitration Rules or the Nasdaq General 6 Rules, and provided that they inform their members in writing when the Commission approves any such proposed change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(76).