

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-86422)

July 22, 2019

Order Granting Application by: Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, and Nasdaq Phlx LLC 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

Nasdaq BX, Inc. (“BX”), Nasdaq GEMX, LLC (“GEMX”), Nasdaq ISE, LLC (“ISE”), Nasdaq MRX, LLC (“MRX”), and Nasdaq Phlx LLC (“Phlx”) (each the “Exchange” and collectively, the “Exchanges”) have filed with the Securities and Exchange Commission (“Commission”) an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> from the rule filing requirements of Section 19(b) of the Exchange Act<sup>2</sup> with respect to certain rules of the Nasdaq Stock Market, LLC (“Nasdaq”)<sup>3</sup> that the Exchanges seek to incorporate by reference.<sup>4</sup> Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

The Exchanges each filed a proposed rule change under Section 19(b) of the Exchange Act to delete their existing registration, qualification, and continuing education rules<sup>5</sup> and

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<sup>1</sup> 15 U.S.C. 78mm(a)(1).

<sup>2</sup> 15 U.S.C. 78s(b).

<sup>3</sup> Nasdaq is an affiliate of the Exchanges.

<sup>4</sup> See Letter from Angela Dunn, Senior Associate General Counsel, Nasdaq Inc., to Vanessa Countryman, Acting Secretary, Commission, dated April 30, 2019 (“Exemptive Request”).

<sup>5</sup> See Securities Exchange Act Release Nos. 85726 (April, 26, 2019) (SR-BX-2019-010), 85737 (April 26, 2019) (SR-GEMX-2019-05), 85728 (April 26, 2019) (SR-ISE-2019-12), 85730 (April 26, 2019) (SR-MRX-2019-09), and 85761 (May 2, 2019) (SR-Phlx-2019-18). Although the proposed rule changes were filed pursuant to Section

incorporate by reference Nasdaq's General 4 rules ("Nasdaq Registration and Continuing Education Rules"), as such rules may be in effect from time to time. The proposed rule changes would make the Nasdaq Registration and Continuing Education Rules applicable to the Exchanges' members, member organizations (as applicable), associated persons, and other persons subject to their jurisdiction as though such rules were fully set forth within each Exchange's rulebook.

The Exchanges have requested, pursuant to Rule 0-12 under the Exchange Act,<sup>6</sup> that the Commission grant the Exchanges an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to each Exchange's rules that are effected solely by virtue of a change to the Nasdaq Registration and Continuing Education Rules. Specifically, the Exchanges request that they be permitted to incorporate by reference changes made to the Nasdaq Registration and Continuing Education Rules without the need for each Exchange to separately file with the Commission the same proposed rule changes pursuant to Section 19(b) of the Exchange Act.<sup>7</sup>

The Exchanges represent that the Nasdaq Registration and Continuing Education Rules are not trading rules.<sup>8</sup> Moreover, the Exchanges state that they propose to incorporate by reference categories of rules (rather than individual rules within a category) that are regulatory in nature.<sup>9</sup> The Exchanges also represent that, as a condition of this exemption, they would provide

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19(b)(3)(A)(iii) of the Exchange Act, and thereby became effective upon filing with the Commission, the Exchanges stipulated in their proposals that the incorporation by reference would not be operative until such time as the Commission grants this exemptive request.

<sup>6</sup> 17 CFR 240.0-12.

<sup>7</sup> See Exemptive Request, *supra* note 4, at 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

written notice to their members whenever Nasdaq proposes a change to the Nasdaq Registration and Continuing Education Rules.<sup>10</sup>

According to the Exchanges, this exemption is necessary and appropriate because it will result in the Exchanges' rules being consistent with the relevant cross-referenced Nasdaq Registration and Continuing Education Rules at all times, thus ensuring that the Exchanges and Nasdaq maintain consistent registration, qualification, and continuing education rules for their respective members, associated persons, and other persons subject to their jurisdiction.<sup>11</sup>

The Commission has issued exemptions similar to the Exchanges' request.<sup>12</sup> The Commission has previously outlined standards for reviewing exemption requests from 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

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<sup>10</sup> The Exchanges state that they will provide notice on their websites in the same section they use to post their own proposed rule change filings and within the timeframe required by Rule 19b-4(l). In addition, the Exchanges state that their websites will include a link to the Nasdaq website where the proposed rule change filings are located. Id at 3.

<sup>11</sup> Id at 2.

<sup>12</sup> See, e.g., Securities Exchange Act Release Nos. 83887 (August 20, 2018), 83 FR 42722 (August 23, 2018) (order granting exemptive request from Exchanges to incorporate by reference BX's rules for investigatory, disciplinary, and adjudicatory proceedings) ("Nasdaq Investigatory Rules Order"); 80338 (March 29, 2017), 82 FR 16464 (April 4, 2017) (order granting exemptive request from MIAX PEARL, LLC relating to rules of Miami International Securities Exchange, LLC incorporated by reference); 72650 (July 22, 2014), 79 FR 44075 (July 29, 2014) (order granting exemptive requests from NASDAQ OMX BX, Inc. and Nasdaq relating to rules of NASDAQ OMX PHLX LLC incorporated by reference); 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (order approving SR-BX-2012-030 and granting exemptive request relating to rules incorporated by reference by NASDAQ OMX BX, Inc. ); 61534 (February 18, 2010), 75 FR 8760 (February 25, 2010) (order granting BATS Exchange, Inc.'s exemptive request relating to rules incorporated by reference by the BATS Exchange Options Market rules); and 57478 (March 12, 2008), 73 FR 14521 (order approving SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080, and granting exemptive request relating to rules incorporated by reference by the Nasdaq Options Market).

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 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;<sup>13</sup>

- 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 rule such as margin, suitability, or arbitration);<sup>14</sup> 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 the other SRO.<sup>15</sup>

The Commission believes that the Exchanges have satisfied each of these conditions.

The Commission also believes that granting the Exchanges an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of the Commission's and the Exchanges' resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO. The Commission therefore finds it in the public interest and consistent with the protection of investors to exempt the Exchanges from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the Nasdaq Registration and Continuing Education Rules described above to be incorporated by reference. This exemption is conditioned upon the Exchanges promptly providing written notice to their members whenever Nasdaq changes a rule which the Exchanges have incorporated by reference.

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<sup>13</sup> See 17 CFR 240.0-12 and Nasdaq Investigatory Rules Order, supra note 12 at 42723.

<sup>14</sup> Id.

<sup>15</sup> Id.

Accordingly, IT IS ORDERED, pursuant to Section 36 of the Exchange Act,<sup>16</sup> that the Exchanges are exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the rules identified in their request that incorporate by reference certain Nasdaq rules, provided that the Exchanges promptly provide written notice to their members whenever Nasdaq proposes to change a rule that the Exchanges have incorporated by reference.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>16</sup> 15 U.S.C. 78mm.

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