



ERIK WITTMAN
SENIOR ASSOCIATE GENERAL COUNSEL
1100 NEW YORK AVENUE
WASHINGTON, DC 20005

P: [REDACTED]
F: [REDACTED]
E: [REDACTED]

March 28, 2019

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Amendment No. 2 (SR-NASDAQ-2019-007)

Dear Mr. Fields:

The Nasdaq Stock Market LLC filed the above-referenced filing on February 28, 2019.

Sincerely,

A handwritten signature in black ink that reads 'Erik Wittman'.

Erik Wittman
Senior Associate General Counsel

OMB APPROVAL

OMB Number: 3235-0045
 Estimated average burden
 hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 25

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

File No.* SR - 2019 - * 007

Amendment No. (req. for Amendments *) 2

Filing by The Nasdaq Stock Market LLC

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

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Rule

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Security-Based Swap Submission pursuant
 to the Securities Exchange Act of 1934

Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>

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 *).

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 *	Erik	Last Name *	Wittman
Title *	Senior Associate General Counsel		
E-mail *	Erik.Wittman@nasdaq.com		
Telephone *	<input type="text"/>	Fax	<input type="text"/>

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 03/28/2019

By Edward S. Knight

(Name *)

Global Chief Legal and Policy Officer

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.



SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

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

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 Advance 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, security-based swap submission, or advance notice 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

Exhibit Sent As Paper Document

☐

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 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

☐

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 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) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to assume operational responsibility for certain investigation and enforcement functions currently performed by the Financial Industry Regulatory Authority (“FINRA”) under the Exchange’s authority and supervision. Nasdaq Rule 0150 requires Commission approval for this transfer of operational responsibility to Nasdaq. Nasdaq anticipates a phased transition, whereby Nasdaq would assume increasing responsibility throughout 2019 and into 2020 for investigation and enforcement activities for certain conduct occurring on the Nasdaq market.

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

(b) Not applicable.

(c) Not applicable.

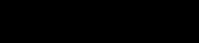
2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on January 30, 2019. No other action is necessary for the filing of the rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Erik Wittman
Senior Associate General Counsel
Nasdaq, Inc.


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

a. Purpose

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

Notwithstanding its use of FINRA, the Exchange has also retained operational responsibility for a number of regulatory functions, including real-time surveillance, qualification of companies listed on Nasdaq and most surveillance related to its affiliated options markets. Historically, Nasdaq retained operational responsibility in areas where Nasdaq's expertise regarding its own markets, technology and listed companies enhanced

³ 15 U.S.C. 78(f).

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

regulation. In recognition of this, on September 30, 2013, the Commission approved Nasdaq's proposal to reallocate operational responsibility from FINRA to Nasdaq for certain equities surveillance patterns and related review functions, focused on: (1) manipulation patterns that monitor solely Nasdaq activity; and (2) monitoring of compliance by member firms with elements of the Commission's Regulation M and Nasdaq Rule 4619 compliance.⁵

Building on Nasdaq's experience and expertise, this proposal reflects a natural evolution of Nasdaq's proven model to assume and retain operational responsibility in areas where its in-depth knowledge of its markets and members enhances market regulation. For the reasons outlined below, Nasdaq now seeks Commission approval to reallocate operational responsibility from FINRA to Nasdaq Regulation⁶ for certain investigation and enforcement activity, namely:

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

⁵ Securities Exchange Act Release No. 70569 (September 30, 2013), 78 FR 62814 (October 22, 2013) (SR-NASDAQ-2013-102).

⁶ Under Nasdaq Rule 9120(t), Nasdaq Regulation includes the Nasdaq Enforcement Department.

⁷ As appropriate, Nasdaq Regulation will coordinate with other SROs to the extent it is investigating activity occurring on Non-Nasdaq options markets to ensure no regulatory duplication occurs.

⁸ With respect to the operational responsibilities described in both bullet points, Nasdaq Regulation currently performs these functions for the Nasdaq PHLX LLC

Currently, under RSAs, FINRA is responsible for, among other things, the investigation of matters referred from Nasdaq MarketWatch and the Phlx Market Surveillance department.⁹ FINRA is also responsible for providing services related to Nasdaq's formal disciplinary process, including the issuance of Wells Notices, Cautionary Action Letters, Complaints, and settlement documents.

Nasdaq now proposes to perform the functions described in the bullet points above and is seeking Commission approval to do so. Nasdaq believes that its expertise in its own market structure coupled with its expertise in surveillance activities will enable it to conduct investigation and enforcement responsibilities for the Exchange effectively, efficiently and with immediacy. In addition, this proposal represents an incremental reallocation of operational responsibility because Nasdaq Regulation currently performs investigative and enforcement work on behalf of Phlx, ISE, GEMX, and MRX, providing it with relevant experience to perform these functions for the Exchanges as well. Most recently, Phlx filed for immediate effectiveness amendments to the Phlx's rules that set forth an investigatory and disciplinary process identical in all material respects to the investigatory and disciplinary processes of Nasdaq and BX.¹⁰ The amendments also had

("Phlx"), Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX"), and Nasdaq MRX, LLC ("MRX") because there is no comparable rule to Rule 0150 on those markets. Nasdaq BX, Inc. ("BX"), which does have a comparable rule to Rule 0150, will file a similar rule filing to request Commission approval for Nasdaq Regulation to perform these functions on behalf of BX.

⁹ The Phlx Market Surveillance department performs surveillance work for all of Nasdaq's options markets (i.e. Nasdaq Options, BX Options, Phlx Options, ISE, GEMX, and MRX).

¹⁰ See Securities Exchange Act Release No. 82143 (November 22, 2017), 82 FR 56672 (November 29, 2017) (SR-Phlx-2017-92) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Investigatory and Disciplinary Processes Substantially Similar to Nasdaq BX, Inc. and The Nasdaq Stock Market

the effect of granting Phlx's Regulation Department investigation and enforcement authority.¹¹ Nasdaq now seeks Commission approval to exercise this same authority for conduct on Nasdaq that it already exercises for Phlx, ISE, GEMX, and MRX.

Notwithstanding this proposal, FINRA will continue to perform certain functions, including, among other things: (1) the investigation and enforcement of conduct occurring on the Nasdaq equity market that also relates to cross market activity on non-Nasdaq exchanges; (2) the handling of contested disciplinary proceedings arising out of Nasdaq Regulation-led investigation and enforcement activities¹²; and (3) matters covered by agreements to allocate regulatory responsibility under Rule 17d-2 of the Act. As with all investigation and enforcement work, all tasks delegated to FINRA are subject to Nasdaq's supervision and ultimate responsibility.

Nasdaq Regulation has instituted the requisite infrastructure to accommodate the internalization of investigative and enforcement work on behalf of the Exchange.

LLC for Phlx, which, among other things, similarly enabled Phlx's Regulation Department to perform these functions).

¹¹ See Securities Exchange Act Release No. 82143 (November 22, 2017), 82 FR 56672 (November 29, 2017) (SR-Phlx-2017-92) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Investigatory and Disciplinary Processes Substantially Similar to Nasdaq BX, Inc. and The Nasdaq Stock Market LLC for Phlx, which, among other things, similarly enabled Phlx's Regulation Department to perform these functions).

¹² For example, pursuant to Rule 9216, if at the conclusion of a Nasdaq Regulation-led investigation, Nasdaq Regulation has reason to believe that a violation occurred but the Respondent disputes the violation and therefore does not execute an Acceptance, Waiver, and Consent ("AWC") letter, or if the Respondent executes the AWC letter but the Nasdaq Review Council, Review Subcommittee or FINRA's Office of Disciplinary Affairs does not accept the executed letter, the Exchange may decide to pursue formal disciplinary proceedings. In such a case, the Exchange would refer the matter to FINRA to handle the formal disciplinary proceedings on its behalf. FINRA's Office of Hearing Officers will continue to be responsible for the administration of the hearing process.

Specifically, Nasdaq created a new investigation and enforcement group to perform the functions covered by this proposal, which included hiring additional staff. Nasdaq is also leveraging its existing staff of experienced analysts, lawyers, programmers, and market structure experts to assist, where necessary, with performing the new functions covered by this proposal. In addition, Nasdaq Regulation has developed comprehensive plans covering the transition and has met regularly for more than one year to ensure a smooth transition of the work and prevent any gaps in regulatory coverage. Finally, Nasdaq filed for immediate effectiveness amendments to its rules that aligned its existing investigatory and disciplinary processes with the investigatory and disciplinary processes of Phlx. The amendments also granted the Nasdaq Enforcement Department with the investigative and enforcement authority that Nasdaq now seeks approval to exercise.¹³

Nasdaq anticipates a phased transition of investigative and enforcement responsibility, whereby Nasdaq would assume increasing investigation and enforcement responsibility throughout 2019 and into 2020 for the conduct occurring on the Exchange.¹⁴ Nasdaq also anticipates transitioning certain matters currently pending with FINRA to the Nasdaq Enforcement Department if Nasdaq Regulation believes doing so is consistent with ensuring prompt resolution of regulatory matters.

Nasdaq Rule 0150 requires that Nasdaq obtain Commission approval if regulatory functions subject to RSAs in effect at the time that Nasdaq began to operate as a national securities exchange are no longer performed by FINRA or an affiliate thereof, or by

¹³ Securities Exchange Act Release No. 84355 (October 3, 2018), 83 FR 51015, 51016 (October 10, 2018) (SR-NASDAQ-2018-066).

¹⁴ The Exchange notes that the investigatory and disciplinary processes and related rules applicable to its Members that FINRA currently follows on the Exchange's behalf (i.e. the Series 8000 and 9000 Rules) will remain the same.

another independent self-regulatory organization. For the reasons stated above, Nasdaq believes that the reassignment of the specified investigation and enforcement responsibility will further its regulatory program and benefit investors and the markets. Commission approval of the proposal would allow Nasdaq to better leverage its surveillance, investigation, and enforcement teams; to deliver increased efficiencies in the regulation of its market; and to act promptly and provide more effective regulation.

In addition, Nasdaq notes that its proposal is consistent with, but more limited than, investigation and enforcement work performed by other national securities exchanges. For example, in 2015, the SEC approved the New York Stock Exchange's ("NYSE") application whereby NYSE amended certain of its disciplinary rules to facilitate the reintegration of certain market surveillance, investigation and enforcement functions performed on behalf of NYSE by FINRA.¹⁵ Unlike NYSE, however, Nasdaq will also continue to rely on FINRA to prosecute contested matters before a Hearing Panel.¹⁶

¹⁵ See Securities Exchange Act Release No. 75721 (August 18, 2015), 80 FR 51334 (August 24, 2015) and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 3 and 5, Amending Exchange Disciplinary Rules to Facilitate the Reintegration of Certain Regulatory Functions from Financial Industry Regulatory Authority, Inc., Securities Exchange Act Release No. 76436 (November 13, 2015), 80 FR 72460 (November 19, 2015) (SR-NYSE-2015-35).

¹⁶ See Nasdaq Rule 9120(q) ("The term "Hearing Panel" means an Adjudicator that is constituted under Rule 9231 to conduct a disciplinary proceeding governed by the Rule 9200 Series, that is constituted under the Rule 9520 Series or the Rule 9550 Series to conduct a proceeding, or that is constituted under the Rule 9800 Series to conduct a temporary cease and desist proceeding."). See also *supra* note 12.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In addition, the Exchange believes that the proposal furthers the objectives of Section 6(b)(7) of the Act,¹⁹ in particular, in that these changes will continue to provide for fair procedures for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof.

The Exchange believes that this proposal is in keeping with those principles because it leverages Nasdaq's extensive operational experience and expertise in regulating its markets and marries Nasdaq's surveillance capabilities with its surveillance, investigation and enforcement staff, thereby increasing effectiveness and enabling prompt action. Nasdaq believes that it can achieve these important objectives because it is uniquely positioned to understand conduct on its own markets and take timely action when appropriate to investigate potential violations and enforce the rules to

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 15 U.S.C. 78f(b)(7).

punish and deter misconduct, hold bad actors accountable, and protect investors and market integrity. In this regard, Nasdaq Regulation's surveillance, investigative and enforcement teams work together to identify and review potentially violative conduct. This results in more effective regulation because it facilitates timely and more efficient action. Indeed, the underlying driving force for the current proposal is Nasdaq's belief that it can conduct this regulatory work more effectively and efficiently given its technology, structure and in-depth knowledge of its markets and members. For these reasons, Nasdaq believes it can conduct investigative and enforcement functions specified above in a thorough and timely manner, thereby promoting the fair and orderly operation of the markets and serving the interests of market participants and investors. In so doing, Nasdaq Regulation will fulfill the Commission's mandate that Nasdaq bear responsibility for self-regulatory conduct.²⁰

Nasdaq will continue to refer certain potentially violative conduct to FINRA for further review, including matters covered by agreements to allocate regulatory responsibility under Rule 17d-2 of the Act. Moreover, FINRA will continue to have responsibility for, among other things, the investigation and enforcement of conduct occurring on the Nasdaq equity market that also occurs on non-Nasdaq exchanges, as well as the handling of contested disciplinary proceedings arising out of Nasdaq Regulation-led investigation and enforcement activities.²¹ All referrals to FINRA remain subject to Nasdaq's supervision and ultimate responsibility.

²⁰ See *supra* note 4.

²¹ See *supra* note 12.

Nasdaq also believes that the proposal is consistent with the Act because, as the Commission has made clear, Nasdaq bears the ultimate responsibility for self-regulatory conduct and primary liability for self-regulatory failures.²² In addition, Nasdaq notes that its proposal is consistent with, but more limited than, investigation and enforcement work performed by NYSE. As noted above, the SEC approved NYSE's application to amend certain of its disciplinary rules to facilitate the reintegration of certain market surveillance, investigation and enforcement functions performed on behalf of NYSE by FINRA.²³ Nasdaq believes it would therefore be consistent with the Act for Nasdaq to perform more limited investigation and enforcement work than NYSE.

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 rather to enable the Exchange to directly investigate and initiate disciplinary actions for the specified conduct discussed above following the integration of certain regulatory functions from FINRA.

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

The Exchange does not consent to an extension of the time period for Commission action.

²² See *supra* note 4.

²³ See *supra* note 15.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

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

The proposed rule change is not based on the rules of another SRO or of the Commission, although the proposal is in substance similar to what NYSE has been permitted to do,²⁴ and is the same to what Nasdaq currently does for its affiliated exchanges, Phlx, ISE, GEMX, and MRX.

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.

²⁴

See supra note 15.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2019-007)

March __, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Reassign Certain Investigation and Enforcement Functions under the Exchange's Authority and Supervision

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on March 28, 2019, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to assume operational responsibility for certain investigation and enforcement functions currently performed by the Financial Industry Regulatory Authority ("FINRA") under the Exchange's authority and supervision. Nasdaq Rule 0150 requires Commission approval for this transfer of operational responsibility to Nasdaq. Nasdaq anticipates a phased transition, whereby Nasdaq would assume increasing responsibility throughout 2019 and into 2020 for investigation and enforcement activities for certain conduct occurring on the Nasdaq market.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

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

1. Purpose

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

³ 15 U.S.C. 78(f).

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

Notwithstanding its use of FINRA, the Exchange has also retained operational responsibility for a number of regulatory functions, including real-time surveillance, qualification of companies listed on Nasdaq and most surveillance related to its affiliated options markets. Historically, Nasdaq retained operational responsibility in areas where Nasdaq's expertise regarding its own markets, technology and listed companies enhanced regulation. In recognition of this, on September 30, 2013, the Commission approved Nasdaq's proposal to reallocate operational responsibility from FINRA to Nasdaq for certain equities surveillance patterns and related review functions, focused on: (1) manipulation patterns that monitor solely Nasdaq activity; and (2) monitoring of compliance by member firms with elements of the Commission's Regulation M and Nasdaq Rule 4619 compliance.⁵

Building on Nasdaq's experience and expertise, this proposal reflects a natural evolution of Nasdaq's proven model to assume and retain operational responsibility in areas where its in-depth knowledge of its markets and members enhances market regulation. For the reasons outlined below, Nasdaq now seeks Commission approval to reallocate operational responsibility from FINRA to Nasdaq Regulation⁶ for certain investigation and enforcement activity, namely:

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

⁵ Securities Exchange Act Release No. 70569 (September 30, 2013), 78 FR 62814 (October 22, 2013) (SR-NASDAQ-2013-102).

⁶ Under Nasdaq Rule 9120(t), Nasdaq Regulation includes the Nasdaq Enforcement Department.

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

Currently, under RSAs, FINRA is responsible for, among other things, the investigation of matters referred from Nasdaq MarketWatch and the Phlx Market Surveillance department.⁹ FINRA is also responsible for providing services related to Nasdaq's formal disciplinary process, including the issuance of Wells Notices, Cautionary Action Letters, Complaints, and settlement documents.

Nasdaq now proposes to perform the functions described in the bullet points above and is seeking Commission approval to do so. Nasdaq believes that its expertise in its own market structure coupled with its expertise in surveillance activities will enable it to conduct investigation and enforcement responsibilities for the Exchange effectively, efficiently and with immediacy. In addition, this proposal represents an incremental

⁷ As appropriate, Nasdaq Regulation will coordinate with other SROs to the extent it is investigating activity occurring on Non-Nasdaq options markets to ensure no regulatory duplication occurs.

⁸ With respect to the operational responsibilities described in both bullet points, Nasdaq Regulation currently performs these functions for the Nasdaq PHLX LLC ("Phlx"), Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX"), and Nasdaq MRX, LLC ("MRX") because there is no comparable rule to Rule 0150 on those markets. Nasdaq BX, Inc. ("BX"), which does have a comparable rule to Rule 0150, will file a similar rule filing to request Commission approval for Nasdaq Regulation to perform these functions on behalf of BX.

⁹ The Phlx Market Surveillance department performs surveillance work for all of Nasdaq's options markets (i.e. Nasdaq Options, BX Options, Phlx Options, ISE, GEMX, and MRX).

reallocation of operational responsibility because Nasdaq Regulation currently performs investigative and enforcement work on behalf of Phlx, ISE, GEMX, and MRX, providing it with relevant experience to perform these functions for the Exchanges as well. Most recently, Phlx filed for immediate effectiveness amendments to the Phlx's rules that set forth an investigatory and disciplinary process identical in all material respects to the investigatory and disciplinary processes of Nasdaq and BX.¹⁰ The amendments also had the effect of granting Phlx's Regulation Department investigation and enforcement authority.¹¹ Nasdaq now seeks Commission approval to exercise this same authority for conduct on Nasdaq that it already exercises for Phlx, ISE, GEMX, and MRX.

Notwithstanding this proposal, FINRA will continue to perform certain functions, including, among other things: (1) the investigation and enforcement of conduct occurring on the Nasdaq equity market that also relates to cross market activity on non-Nasdaq exchanges; (2) the handling of contested disciplinary proceedings arising out of Nasdaq Regulation-led investigation and enforcement activities¹²; and (3) matters

¹⁰ See Securities Exchange Act Release No. 82143 (November 22, 2017), 82 FR 56672 (November 29, 2017) (SR-Phlx-2017-92) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Investigatory and Disciplinary Processes Substantially Similar to Nasdaq BX, Inc. and The Nasdaq Stock Market LLC for Phlx, which, among other things, similarly enabled Phlx's Regulation Department to perform these functions).

¹¹ See Securities Exchange Act Release No. 82143 (November 22, 2017), 82 FR 56672 (November 29, 2017) (SR-Phlx-2017-92) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Investigatory and Disciplinary Processes Substantially Similar to Nasdaq BX, Inc. and The Nasdaq Stock Market LLC for Phlx, which, among other things, similarly enabled Phlx's Regulation Department to perform these functions).

¹² For example, pursuant to Rule 9216, if at the conclusion of a Nasdaq Regulation-led investigation, Nasdaq Regulation has reason to believe that a violation occurred but the Respondent disputes the violation and therefore does not execute an Acceptance, Waiver, and Consent ("AWC") letter, or if the Respondent

covered by agreements to allocate regulatory responsibility under Rule 17d-2 of the Act. As with all investigation and enforcement work, all tasks delegated to FINRA are subject to Nasdaq's supervision and ultimate responsibility.

Nasdaq Regulation has instituted the requisite infrastructure to accommodate the internalization of investigative and enforcement work on behalf of the Exchange. Specifically, Nasdaq created a new investigation and enforcement group to perform the functions covered by this proposal, which included hiring additional staff. Nasdaq is also leveraging its existing staff of experienced analysts, lawyers, programmers, and market structure experts to assist, where necessary, with performing the new functions covered by this proposal. In addition, Nasdaq Regulation has developed comprehensive plans covering the transition and has met regularly for more than one year to ensure a smooth transition of the work and prevent any gaps in regulatory coverage. Finally, Nasdaq filed for immediate effectiveness amendments to its rules that aligned its existing investigatory and disciplinary processes with the investigatory and disciplinary processes of Phlx. The amendments also granted the Nasdaq Enforcement Department with the investigative and enforcement authority that Nasdaq now seeks approval to exercise.¹³

Nasdaq anticipates a phased transition of investigative and enforcement responsibility, whereby Nasdaq would assume increasing investigation and enforcement

executes the AWC letter but the Nasdaq Review Council, Review Subcommittee or FINRA's Office of Disciplinary Affairs does not accept the executed letter, the Exchange may decide to pursue formal disciplinary proceedings. In such a case, the Exchange would refer the matter to FINRA to handle the formal disciplinary proceedings on its behalf. FINRA's Office of Hearing Officers will continue to be responsible for the administration of the hearing process.

¹³ Securities Exchange Act Release No. 84355 (October 3, 2018), 83 FR 51015, 51016 (October 10, 2018) (SR-NASDAQ-2018-066).

responsibility throughout 2019 and into 2020 for the conduct occurring on the Exchange.¹⁴ Nasdaq also anticipates transitioning certain matters currently pending with FINRA to the Nasdaq Enforcement Department if Nasdaq Regulation believes doing so is consistent with ensuring prompt resolution of regulatory matters.

Nasdaq Rule 0150 requires that Nasdaq obtain Commission approval if regulatory functions subject to RSAs in effect at the time that Nasdaq began to operate as a national securities exchange are no longer performed by FINRA or an affiliate thereof, or by another independent self-regulatory organization. For the reasons stated above, Nasdaq believes that the reassignment of the specified investigation and enforcement responsibility will further its regulatory program and benefit investors and the markets. Commission approval of the proposal would allow Nasdaq to better leverage its surveillance, investigation, and enforcement teams; to deliver increased efficiencies in the regulation of its market; and to act promptly and provide more effective regulation.

In addition, Nasdaq notes that its proposal is consistent with, but more limited than, investigation and enforcement work performed by other national securities exchanges. For example, in 2015, the SEC approved the New York Stock Exchange's ("NYSE") application whereby NYSE amended certain of its disciplinary rules to facilitate the reintegration of certain market surveillance, investigation and enforcement functions performed on behalf of NYSE by FINRA.¹⁵ Unlike NYSE, however, Nasdaq

¹⁴ The Exchange notes that the investigatory and disciplinary processes and related rules applicable to its Members that FINRA currently follows on the Exchange's behalf (i.e. the Series 8000 and 9000 Rules) will remain the same.

¹⁵ See Securities Exchange Act Release No. 75721 (August 18, 2015), 80 FR 51334 (August 24, 2015) and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 3 and 5, Amending Exchange Disciplinary Rules to Facilitate the Reintegration of Certain Regulatory Functions

will also continue to rely on FINRA to prosecute contested matters before a Hearing Panel.¹⁶

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In addition, the Exchange believes that the proposal furthers the objectives of Section 6(b)(7) of the Act,¹⁹ in particular, in that these changes will continue to provide for fair procedures for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof.

from Financial Industry Regulatory Authority, Inc., Securities Exchange Act Release No. 76436 (November 13, 2015), 80 FR 72460 (November 19, 2015) (SR-NYSE-2015-35).

¹⁶ See Nasdaq Rule 9120(q) (“The term “Hearing Panel” means an Adjudicator that is constituted under Rule 9231 to conduct a disciplinary proceeding governed by the Rule 9200 Series, that is constituted under the Rule 9520 Series or the Rule 9550 Series to conduct a proceeding, or that is constituted under the Rule 9800 Series to conduct a temporary cease and desist proceeding.”). *See also supra* note 12.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 15 U.S.C. 78f(b)(7).

The Exchange believes that this proposal is in keeping with those principles because it leverages Nasdaq's extensive operational experience and expertise in regulating its markets and marries Nasdaq's surveillance capabilities with its surveillance, investigation and enforcement staff, thereby increasing effectiveness and enabling prompt action. Nasdaq believes that it can achieve these important objectives because it is uniquely positioned to understand conduct on its own markets and take timely action when appropriate to investigate potential violations and enforce the rules to punish and deter misconduct, hold bad actors accountable, and protect investors and market integrity. In this regard, Nasdaq Regulation's surveillance, investigative and enforcement teams work together to identify and review potentially violative conduct. This results in more effective regulation because it facilitates timely and more efficient action. Indeed, the underlying driving force for the current proposal is Nasdaq's belief that it can conduct this regulatory work more effectively and efficiently given its technology, structure and in-depth knowledge of its markets and members. For these reasons, Nasdaq believes it can conduct investigative and enforcement functions specified above in a thorough and timely manner, thereby promoting the fair and orderly operation of the markets and serving the interests of market participants and investors. In so doing, Nasdaq Regulation will fulfill the Commission's mandate that Nasdaq bear responsibility for self-regulatory conduct.²⁰

Nasdaq will continue to refer certain potentially violative conduct to FINRA for further review, including matters covered by agreements to allocate regulatory responsibility under Rule 17d-2 of the Act. Moreover, FINRA will continue to have

²⁰ See *supra* note 4.

responsibility for, among other things, the investigation and enforcement of conduct occurring on the Nasdaq equity market that also occurs on non-Nasdaq exchanges, as well as the handling of contested disciplinary proceedings arising out of Nasdaq Regulation-led investigation and enforcement activities.²¹ All referrals to FINRA remain subject to Nasdaq's supervision and ultimate responsibility.

Nasdaq also believes that the proposal is consistent with the Act because, as the Commission has made clear, Nasdaq bears the ultimate responsibility for self-regulatory conduct and primary liability for self-regulatory failures.²² In addition, Nasdaq notes that its proposal is consistent with, but more limited than, investigation and enforcement work performed by NYSE. As noted above, the SEC approved NYSE's application to amend certain of its disciplinary rules to facilitate the reintegration of certain market surveillance, investigation and enforcement functions performed on behalf of NYSE by FINRA.²³ Nasdaq believes it would therefore be consistent with the Act for Nasdaq to perform more limited investigation and enforcement work than NYSE.

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 rather to enable the Exchange to directly investigate and initiate disciplinary actions for the

²¹ See *supra* note 12.

²² See *supra* note 4.

²³ See *supra* note 15.

specified conduct discussed above following the integration of certain regulatory functions from FINRA.

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

No written comments were either solicited or received.

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

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2019-007 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-2019-007. This file number should be included on the subject line if e-mail 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 Web site (<http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2019-007 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Eduardo A. Aleman
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).