



**Erik Wittman**

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March 24, 2020

Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: SR-NASDAQ-2020-007 Amendment # 1

Dear Ms. Countryman:

The Nasdaq Stock Market LLC filed the above-referenced filing on March 24, 2020.

Sincerely,

A handwritten signature in black ink that reads 'Erik Wittman'. The signature is written in a cursive style and is enclosed within a thin black rectangular border.

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 \* 20

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

File No.\* SR - 2020 - \* 007

Amendment No. (req. for Amendments \*) 1

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 *	(202) 912-3070	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 03/24/2020

By John Zecca

(Name \*)

EVP and Chief Legal Counsel

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.

john.zecca@nasdaq.com

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 \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, 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

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to assume operational responsibility for certain enforcement functions currently performed by the Financial Industry Regulatory Authority (“FINRA”) under the Exchange’s authority and supervision. Specifically, the Exchange proposes to assume operational responsibility for litigating certain contested disciplinary proceedings arising out of Nasdaq Regulation-led investigation and enforcement activities. Nasdaq Rule General 1, Section 7<sup>3</sup> requires Commission approval for this proposal.

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 29, 2020. No other action is necessary for the filing of the rule change.

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

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

<sup>3</sup> Formally Nasdaq Rule 0150.

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

Erik Wittman  
Senior Associate General Counsel  
Nasdaq, Inc.  
(202) 912-3070

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.<sup>4</sup> As a self-regulatory organization ("SRO"), Nasdaq must have a comprehensive regulatory program that includes investigation and prosecution of violative 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."<sup>5</sup>

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<sup>4</sup> 15 U.S.C. 78(f).

<sup>5</sup> Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550, 3556 (January 23, 2006).

In April 2019, Nasdaq received Commission approval to reallocate operational responsibility from FINRA to Nasdaq Regulation<sup>6</sup> for certain investigation and enforcement activity,<sup>7</sup> namely:

- investigation and enforcement responsibilities for conduct occurring on The Nasdaq Options Market,<sup>8</sup> and
- investigation and enforcement responsibilities for conduct occurring on Nasdaq's equity market only, i.e., not also on non-Nasdaq-affiliated equities markets.<sup>9</sup>

Notwithstanding that approval, FINRA continues to perform certain functions pursuant to a RSA,<sup>10</sup> including, among other things, the handling of contested disciplinary proceedings arising out of Nasdaq Regulation-led investigation and

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<sup>6</sup> Under Nasdaq Rule 9120(t), Nasdaq Regulation includes the Nasdaq Enforcement Department.

<sup>7</sup> Securities Exchange Act Release No. 85505 (April 3, 2019), 84 FR 14170, 14171 (April 9, 2016).

<sup>8</sup> As appropriate, Nasdaq Regulation coordinates with other SROs to the extent it is investigating activity occurring on non-Nasdaq options markets to ensure no regulatory duplication occurs.

<sup>9</sup> With respect to the operational responsibilities described, Nasdaq Regulation already performed 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 General 1, Section 7 on those markets. Nasdaq BX, Inc. ("BX"), which does have a comparable rule to Rule General 1, Section 7, received Commission approval to perform these functions in June 2019. See Securities Exchange Act Release No. 86051 (June 6, 2019), 84 FR 27387 (June 22, 2019).

<sup>10</sup> In addition to work performed pursuant to a RSA, FINRA also performs work for matters covered by agreements to allocate regulatory responsibility under Rule 17d-2 of the Act.

enforcement activities.<sup>11</sup> Nasdaq now requests Commission approval to reallocate operational responsibility from FINRA to Nasdaq Regulation for certain enforcement activity, namely the handling of certain contested disciplinary proceedings.<sup>12</sup> Specifically, Nasdaq Regulation anticipates handling those contested disciplinary proceedings that FINRA is unable or unwilling to handle due to strained resources or other similar limitations.<sup>13</sup> For those contested disciplinary proceedings over which Nasdaq Regulation does not assume operational responsibility, the Exchange will continue to use FINRA to litigate those matters.

In its prior request for Commission approval to reallocate operational responsibility from FINRA to Nasdaq Regulation for certain investigation and enforcement functions, the Exchange noted 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

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<sup>11</sup> 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 continues to be responsible for the administration of the hearing process.

<sup>12</sup> Nasdaq may determine to engage a third party, such as a law firm, to litigate the matter on its behalf. In all cases, the Exchange will continue to use FINRA’s Office of Hearing Officers to administer the hearing process.

<sup>13</sup> Nasdaq Regulation’s decision to assume operation reasonability for any given contested disciplinary proceeding will be made on a case by case basis.

immediacy.<sup>14</sup> The Exchange believes that assuming responsibility for litigating certain contested disciplinary proceedings, as discussed above, will similarly ensure that matters are handled effectively, efficiently and with immediacy. The Exchange notes that this proposal would not change or alter in any way the disciplinary processes around how contested matters are handled. For example, the rules applicable to the disciplinary process remain the same and FINRA's Office of Hearing Officers will continue to administer the hearing process for all contested disciplinary proceedings. Therefore, regardless of whether FINRA or the Exchange is responsible for litigating the matter, FINRA's Office of Hearing Officers will administer the hearing process.<sup>15</sup>

Nasdaq Rule General 1, Section 7 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. Nasdaq believes that assuming operational responsibility for certain contested disciplinary proceedings will further its regulatory program and benefit investors and the markets. Commission approval of the proposal would allow Nasdaq to deliver increased efficiencies in the regulation of its market and to act promptly and provide more effective regulation.<sup>16</sup>

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<sup>14</sup> Securities Exchange Act Release No. 85153 (February 15, 2019), 84 FR 5748, 5752 (February 22, 2019).

<sup>15</sup> FINRA's Office of Hearing Officers plays no role in uncontested disciplinary proceedings.

<sup>16</sup> BX, which has a comparable rule to Rule General 1, Section 7, will file a similar rule filing to request Commission approval to assume operational responsibility for certain contested disciplinary proceedings.



Finally, Nasdaq notes that its proposal is consistent with 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.<sup>17</sup> That reintegration also included the handling of contested disciplinary proceedings.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>19</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In addition, the Exchange believes that the proposal furthers the objectives of Section 6(b)(7) of the Act,<sup>20</sup> 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

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<sup>17</sup> 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).

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> 15 U.S.C. 78f(b)(7).

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 will ensure that certain contested matters retained by Nasdaq Regulation are handled effectively, efficiently and with immediacy. The ability to assume responsibility for the handling of certain contested matters will ensure that contested cases are handled promptly when, for example, FINRA's litigation resources are strained or when it is otherwise unable or unwilling to handle a particular matter. This will enable the Exchange to take timely action when appropriate to enforce its rules, hold bad actors accountable, and protect investors and market integrity. This proposal, however, would not change or alter in any way the disciplinary processes around how contested matters are handled. Rather, it will result in more effective regulation because it will facilitate timely and more efficient action. Internalizing the litigation function in certain contested matters will also facilitate effective regulation because the Exchange will continue to bring to bear its overall market and surveillance expertise throughout the disciplinary proceedings.

3. 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 have the option to litigate certain contested matters when FINRA is unable or unwilling to do so through the RSA.

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.

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.<sup>21</sup>

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

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<sup>21</sup> See supra note 17.

**EXHIBIT 1**

## SECURITIES AND EXCHANGE COMMISSION

(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2020-007)

March \_\_, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Assume Operational Responsibility for Certain Enforcement Functions Currently Performed by FINRA under the Exchanges Authority and Supervision

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 March 24, 2020, 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 enforcement functions currently performed by the Financial Industry Regulatory Authority (“FINRA”) under the Exchange’s authority and supervision. Specifically, the Exchange proposes to assume operational responsibility for litigating certain contested disciplinary proceedings arising out of Nasdaq Regulation-led investigation and

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

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

enforcement activities. Nasdaq Rule General 1, Section 7<sup>3</sup> requires Commission approval for this proposal.

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.<sup>4</sup> As a self-regulatory organization ("SRO"), Nasdaq must have a comprehensive regulatory program that includes investigation and prosecution of violative 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,

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<sup>3</sup> Formally Nasdaq Rule 0150.

<sup>4</sup> 15 U.S.C. 78(f).

“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.”<sup>5</sup>

In April 2019, Nasdaq received Commission approval to reallocate operational responsibility from FINRA to Nasdaq Regulation<sup>6</sup> for certain investigation and enforcement activity,<sup>7</sup> namely:

- investigation and enforcement responsibilities for conduct occurring on The Nasdaq Options Market,<sup>8</sup> and
- investigation and enforcement responsibilities for conduct occurring on Nasdaq’s equity market only, i.e., not also on non-Nasdaq-affiliated equities markets.<sup>9</sup>

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<sup>5</sup> Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550, 3556 (January 23, 2006).

<sup>6</sup> Under Nasdaq Rule 9120(t), Nasdaq Regulation includes the Nasdaq Enforcement Department.

<sup>7</sup> Securities Exchange Act Release No. 85505 (April 3, 2019), 84 FR 14170, 14171 (April 9, 2016).

<sup>8</sup> As appropriate, Nasdaq Regulation coordinates with other SROs to the extent it is investigating activity occurring on non-Nasdaq options markets to ensure no regulatory duplication occurs.

<sup>9</sup> With respect to the operational responsibilities described, Nasdaq Regulation already performed 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 General 1, Section 7 on those markets. Nasdaq BX, Inc. (“BX”), which does have a comparable rule to Rule General 1, Section 7, received Commission approval to perform these functions in June 2019. See Securities Exchange Act Release No. 86051 (June 6, 2019), 84 FR 27387 (June 22, 2019).

Notwithstanding that approval, FINRA continues to perform certain functions pursuant to a RSA,<sup>10</sup> including, among other things, the handling of contested disciplinary proceedings arising out of Nasdaq Regulation-led investigation and enforcement activities.<sup>11</sup> Nasdaq now requests Commission approval to reallocate operational responsibility from FINRA to Nasdaq Regulation for certain enforcement activity, namely the handling of certain contested disciplinary proceedings.<sup>12</sup> Specifically, Nasdaq Regulation anticipates handling those contested disciplinary proceedings that FINRA is unable or unwilling to handle due to strained resources or other similar limitations.<sup>13</sup> For those contested disciplinary proceedings over which Nasdaq Regulation does not assume operational responsibility, the Exchange will continue to use FINRA to litigate those matters.

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<sup>10</sup> In addition to work performed pursuant to a RSA, FINRA also performs work for matters covered by agreements to allocate regulatory responsibility under Rule 17d-2 of the Act.

<sup>11</sup> 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 continues to be responsible for the administration of the hearing process.

<sup>12</sup> Nasdaq may determine to engage a third party, such as a law firm, to litigate the matter on its behalf. In all cases, the Exchange will continue to use FINRA’s Office of Hearing Officers to administer the hearing process.

<sup>13</sup> Nasdaq Regulation’s decision to assume operation responsibility for any given contested disciplinary proceeding will be made on a case by case basis.

In its prior request for Commission approval to reallocate operational responsibility from FINRA to Nasdaq Regulation for certain investigation and enforcement functions, the Exchange noted 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.<sup>14</sup> The Exchange believes that assuming responsibility for litigating certain contested disciplinary proceedings, as discussed above, will similarly ensure that matters are handled effectively, efficiently and with immediacy. The Exchange notes that this proposal would not change or alter in any way the disciplinary processes around how contested matters are handled. For example, the rules applicable to the disciplinary process remain the same and FINRA's Office of Hearing Officers will continue to administer the hearing process for all contested disciplinary proceedings. Therefore, regardless of whether FINRA or the Exchange is responsible for litigating the matter, FINRA's Office of Hearing Officers will administer the hearing process.<sup>15</sup>

Nasdaq Rule General 1, Section 7 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. Nasdaq believes that assuming operational responsibility for certain contested disciplinary proceedings will further its regulatory program and benefit investors and the markets. Commission

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<sup>14</sup> Securities Exchange Act Release No. 85153 (February 15, 2019), 84 FR 5748, 5752 (February 22, 2019).

<sup>15</sup> FINRA's Office of Hearing Officers plays no role in uncontested disciplinary proceedings.



approval of the proposal would allow Nasdaq to deliver increased efficiencies in the regulation of its market and to act promptly and provide more effective regulation.<sup>16</sup>

Finally, Nasdaq notes that its proposal is consistent with 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.<sup>17</sup> That reintegration also included the handling of contested disciplinary proceedings.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>19</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In addition, the Exchange believes that the proposal furthers the objectives of Section 6(b)(7) of the

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<sup>16</sup> BX, which has a comparable rule to Rule General 1, Section 7, will file a similar rule filing to request Commission approval to assume operational responsibility for certain contested disciplinary proceedings.

<sup>17</sup> 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).

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

Act,<sup>20</sup> 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 will ensure that certain contested matters retained by Nasdaq Regulation are handled effectively, efficiently and with immediacy. The ability to assume responsibility for the handling of certain contested matters will ensure that contested cases are handled promptly when, for example, FINRA's litigation resources are strained or when it is otherwise unable or unwilling to handle a particular matter. This will enable the Exchange to take timely action when appropriate to enforce its rules, hold bad actors accountable, and protect investors and market integrity. This proposal, however, would not change or alter in any way the disciplinary processes around how contested matters are handled. Rather, it will result in more effective regulation because it will facilitate timely and more efficient action. Internalizing the litigation function in certain contested matters will also facilitate effective regulation because the Exchange will continue to bring to bear its overall market and surveillance expertise throughout the disciplinary proceedings.

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<sup>20</sup> 15 U.S.C. 78f(b)(7).

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 have the option to litigate certain contested matters when FINRA is unable or unwilling to do so through the RSA.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2020-007 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-2020-007. 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-2020-007 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.<sup>21</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).