

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90774; File No. SR-NASDAQ-2020-092)

December 22, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Expiration Date of the Temporary Amendments Set Forth in SR-NASDAQ-2020-076 Concerning Video Conference Hearings

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 17, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. 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 extend the expiration date of the temporary amendments in SR-NASDAQ-2020-076 from December 31, 2020 to April 30, 2021. The proposed rule change would not make any changes to the text of the Exchange rules.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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

In response to the COVID-19 global health crisis and the corresponding need to restrict in-person activities, the Exchange filed proposed rule change SR-NASDAQ-2020-076, which allows the Exchange’s Office of Hearing Officers (“OHO”) and the Exchange Review Council (“ERC”) to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing. The COVID-19 conditions necessitating these temporary amendments persist, with cases rapidly escalating nationwide. Based on its assessment of current COVID-19 conditions, and the lack of certainty as to when COVID-19-related health concerns will subside, the Exchange has determined that there is a continued need for this temporary relief for several months beyond December 31, 2020. Accordingly, the Exchange proposes to extend the expiration date of the temporary rule amendments in SR-NASDAQ-2020-076 from December 31, 2020, to April 30, 2021.

On November 5, 2020, the Exchange filed with the Commission a proposed rule change for immediate effectiveness, SR-NASDAQ-2020-076, to temporarily amend Exchange Rules 1015, 9261, 9524 and 9830 to grant OHO and the ERC authority⁴ to conduct hearings in connection with appeals of Membership Application Program decisions, disciplinary actions, eligibility proceedings and temporary and permanent cease and desist orders by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing (the “November 5 Filing”).⁵ The Commission published its notice of filing and immediate effectiveness for the November 5 Filing on November 10, 2020.⁶ The temporary amendments, as originally proposed in the November 5 Filing, will expire on December 31, 2020, absent another proposed rule change filing by the Exchange.

The Exchange proposed the temporary amendments allowing for specified OHO and ERC hearings to be conducted by video conference in response to the COVID-19-related public health risks posed in connection with conducting traditional, in-person hearings. As set forth in the November 5 Filing, the Exchange relies on COVID-19 data and the guidance issued by public health authorities to determine whether the current public health risks presented by an in-person hearing may warrant a hearing by video conference.⁷ As noted above, the COVID-19-

⁴ For OHO hearings under Exchange Rules 9261 and 9830, the proposed rule change temporarily grants authority to the Chief or Deputy Chief Hearing Officer to order that a hearing be conducted by video conference. For ERC hearings under Exchange Rules 1015 and 9524, this temporary authority is granted to the ERC or relevant Subcommittee.

⁵ The temporary amendments set forth in the November 5 Filing were subject to a 30-day operative delay and, accordingly, became operative on December 6, 2020. See infra note 6 and accompanying text.

⁶ See Exchange Act Release No. 90390 (November 10, 2020), 85 FR 73302 (November 17, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2020-076).

⁷ As noted in the November 5 Filing, the temporary proposed rule change grants discretion to OHO and the ERC to order a video conference hearing. In deciding whether to

related public health risks necessitating this temporary relief have not yet abated, with COVID-19 cases surging nationwide.

Based on its assessment of current COVID-19 conditions, including the recent escalation in COVID-19 cases nationwide, the Exchange does not believe the COVID-19-related health concerns necessitating this relief will subside by December 31, 2020, and has determined that there will be a continued need for this temporary relief for several months beyond December 31, 2020. Accordingly, the Exchange proposes to extend the expiration date of the temporary rule amendments in the November 5 Filing from December 31, 2020, to April 30, 2021. The extension of these temporary amendments allowing for specified OHO and ERC hearings to proceed by video conference will allow the Exchange's critical adjudicatory functions to continue to operate effectively in these extraordinary circumstances – enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets – while also protecting the health and safety of hearing participants.

The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is

schedule a hearing by video conference, OHO and the ERC may consider a variety of other factors in addition to COVID-19 trends.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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, by continuing to provide greater harmonization between the Exchange rules and FINRA rules of similar purpose,¹⁰ resulting in less burdensome and more efficient regulatory compliance.

The proposed rule change, which extends the expiration date of the temporary amendments to the Exchange rules set forth in the November 5 Filing, will continue to aid the Exchange's efforts to timely conduct hearings in connection with its core adjudicatory functions. Given current COVID-19 conditions and the uncertainty around when those conditions will improve, without this relief allowing OHO and ERC hearings to continue to proceed by video conference, such hearings may need to be postponed indefinitely. The Exchange must be able to perform its critical adjudicatory functions in order to fulfill its statutory obligations to protect investors and maintain fair and orderly markets. As such, this relief is essential to the Exchange's ability to fulfill its statutory obligations and allows hearing participants to avoid the serious COVID-19-related health and safety risks associated with in-person hearings.

Among other things, this relief will allow OHO to conduct temporary cease and desist proceedings by video conference so that the Exchange can take immediate action to stop ongoing customer harm and will allow the ERC to timely provide members, disqualified individuals and

¹⁰ See Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR-FINRA-2020-042). In SR-FINRA-2020-042, FINRA proposed rule changes to extend the expiration date of the temporary rule amendments set forth in SR-FINRA-2020-015 and SR-FINRA-2020-027 from December 31, 2020, to April 30, 2021. SR-FINRA-2020-015 provided temporary relief from some timing, method of service and other procedural requirements in FINRA's rules. SR-FINRA-2020-027 allowed FINRA's OHO and the NAC to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing.

other applicants an approval or denial of their applications. As set forth in detail in the November 5 Filing, this temporary relief allowing OHO and ERC hearings to proceed by video conference accounts for fair process considerations and will continue to provide fair process while avoiding the COVID-19-related public health risks for hearing participants. Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

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

The Exchange does not believe that the temporary proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As set forth in the November 5 Filing, the proposed rule change is intended solely to extend temporary relief necessitated by the continued impacts of the COVID-19 outbreak and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to its operations, including its critical adjudicatory processes, and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on December 31, 2020.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)¹¹ of the Act and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative so that the proposed rule change may become operative immediately upon filing. As noted above, the Exchange states that the COVID-related health and safety risks of conducting in-person activities, which necessitated these temporary amendments, persist and that cases are rapidly escalating nationwide. Based on the Exchange's assessment of the current COVID-19 conditions, including the lack of certainty as to when COVID-19-related health concerns will subside, the Exchange has determined that there is a continued need for this temporary relief for several months beyond December 31, 2020. Accordingly, the Exchange states that waiver of the operative delay would allow the proposed changes, which are designed to minimize disruptions to the Exchange's operations in order to maintain fair processes and fulfill its obligations to protect investors and maintain fair and orderly markets, to be operative on the date of filing so the Exchange can implement the extension of these temporary amendments immediately.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

The Exchange also indicates that this filing is eligible to become operative immediately because the proposal would continue to provide greater harmonization between the Exchange rules and FINRA rules that serve a similar purpose, resulting in less burdensome and more efficient regulatory compliance. This proposal would serve to extend the expiration date of the temporary amendments to the Exchange rules set forth in the November 5 Filing, which is consistent with FINRA's extension to its comparable rules, where FINRA requested and the Commission granted a waiver of the 30-day operative delay.¹³ The Exchange also states that this temporary relief is necessary in order to continue performing critical adjudicatory functions necessary to meet its statutory obligations in light of COVID-19 related health and safety risks associated with in-person hearings.

The Commission observes that this proposal, like the Exchange's November 5 Filing and FINRA's comparable filing,¹⁴ provides only temporary relief during the period in which the Exchange's operations are impacted by COVID-19. As proposed, the changes would be in place through April 30, 2021. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁵

¹³ See supra note 10 (referencing FINRA's proposal to extend the expiration date of temporary rule amendments allowing hearings to be conducted on a temporary basis by video conference if warranted by COVID-19 related health risks). See also November 5 Filing, 85 FR at 73303 (stating that with certain exceptions, the text of Exchange Rules 1015, 9261, 9524 and 9830 are substantially the same as FINRA's rules).

¹⁴ See supra note 10 and accompanying text.

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2020-092 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-2020-092. 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 website (<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, on business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2020-092 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.¹⁶

Eduardo A. Aleman
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).