

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-102006; File No. SR-NASDAQ-2024-085)

December 19, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Exchange Rules 1015, 9261, 9341, 9524 and 9830 to Permit Hearings by Video Conference

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 December 19, 2024, 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 amend Exchange Rules 1015, 9261, 9341, 9524 and 9830 to allow for video conference hearings before the Office of Hearing Officers (“OHO”) and the Exchange Review Council (“ERC”) under specified conditions.

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.

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

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

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to harmonize Exchange Rules 1015, 9261, 9341, 9524 and 9830 with changes by the Financial Industry Regulatory Authority, Inc. (“FINRA”) to its Rules 1015, 9261, 9341, 9524 and 9830 that would allow for the use of video conference for reasons in addition to COVID-19. The proposal also deletes expired references to temporary amendments.<sup>3</sup> The Exchange originally filed proposed rule change SR-NASDAQ-2020-076, which allowed 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 COVID-19-related public health risks posed by an in-person hearing.<sup>4</sup> These were extended several times due to the continuing public health risks and logistical challenges related to COVID-19, including whether hearing participants could safely travel and abide by state or local quarantine

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<sup>3</sup> See Securities Exchange Act Release No. 96282 (November 9, 2022), 87 FR 68788 (November 16, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2022-059) (temporary amendments expiring on January 31, 2023).

<sup>4</sup> See Securities 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).

requirements.<sup>5</sup> The use of high quality, secure and user-friendly video conference technology in hearings has demonstrated that video is an effective and efficient alternative to in-person hearings.<sup>6</sup>

The Exchange is proposing to make the temporary amendments regarding video conference hearings permanent, with some modifications that would allow for the use of video conference for reasons in addition to COVID-19. The proposed rule change will continue to improve and modernize the Exchange's operations so that parties, panelists, and the Exchange staff may proceed expeditiously by video conference in the event of certain circumstances, including where unforeseen events make appearing in person difficult or impracticable. As described below, impracticability is intended to account for an uncommon situation or extraordinary circumstance. The proposed rule change further promotes efficiency by giving OHO and the ERC authority to act quickly if a future unexpected event impaired their ability to conduct in-person hearings safely.

OHO conducts hearings in disciplinary proceedings and hearings for temporary and permanent cease and desist orders. When orders in disciplinary proceedings are appealed, the ERC holds hearings on oral argument. The ERC also conducts hearings in membership

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<sup>5</sup> See Securities Exchange Act Release No. 90774 (December 22, 2020), 85 FR 86614 (December 30, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2020-092); Securities Exchange Act Release No. 91763 (May 4, 2021), 86 FR 25055 (May 10, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2021-033); Securities Exchange Act Release No. 92911 (September 9, 2021), 86 FR 51395 (September 15, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2021-067); Securities Exchange Act Release No. 93852 (December 22, 2021), 86 FR 74201 (December 29, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2021-104); Securities Exchange Act Release No. 94610 (April 5, 2022), 87 FR 21225 (April 11, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2022-028); Securities Exchange Act Release No. 95436 (August 5, 2022), 87 FR 49624 (August 11, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2022-044); Securities Exchange Act Release No. 96282 (November 9, 2022), 87 FR 68788 (November 16, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2022-059).

<sup>6</sup> See Securities Exchange Act Release No. 97403 (April 28, 2023), 88 FR 28645 (May 4, 2023) (SR-FINRA-2023-008).

proceedings and eligibility proceedings. Under the proposed rule change, OHO and the ERC's authority to order hearings by video conference would extend beyond the public health risks posed by COVID-19 to other similar situations in which proceeding in person may endanger the health or safety of the participants or would be impracticable. For example, appearing in person may be impracticable in the event of a natural disaster or terrorist attack that caused travel to be cancelled for a period of time. As with the temporary amendments, under the proposed rule change, in-person hearings will remain the default method for hearings before OHO and the ERC, and their exercise of authority under the proposed rule change would be discretionary. In-person hearings may take place where safe and appropriate.

#### Evidentiary Hearings

For evidentiary hearings, the proposed rule change would give OHO or the ERC authority to order an evidentiary hearing to occur by video conference, in whole or in part, if OHO or the ERC determines that proceeding in person may endanger the health or safety of the participants or would be impracticable. OHO and the ERC would have such authority on their own. In addition, under the proposed rule change, parties could file a joint motion requesting the hearing to occur, in whole or in part, by video conference based on a showing of good cause. Whether acting on its own or based on a joint motion of the parties, OHO and the ERC would have reasonable discretion to exercise their authority under the proposed rule change. In deciding whether to schedule a hearing by video conference, OHO and the ERC could consider and balance a variety of factors including, for example and without limitation, a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.

## Oral Argument

The proposed rule change would give the ERC authority to order an oral argument hearing to occur by video conference, in whole or in part, if it determines that proceeding in person may endanger the health or safety of the participants or would be impracticable. The ERC would have such authority on its own. In addition, under the proposed rule change, the ERC would have authority — on its own or on consideration of a motion by any party — to order oral argument to occur by video conference, in whole or in part, for other reasons (*i.e.* reasons not limited to public health, safety or impracticability). Under such circumstances, an opposing party would have the opportunity to demonstrate that the hearing should proceed in person because proceeding by video conference would materially disadvantage that party. Whether a party has shown material disadvantage would depend on the facts and circumstances. Considerations may include, for example and without limitation, case complexity, the issues on appeal, and whether the respondent is pro se and desires to appear in person. Whether acting on its own or based on a motion of a party, the ERC would have reasonable discretion to exercise its authority under the proposed rule change. In deciding whether to order an oral argument hearing by video conference, the ERC could consider and balance a variety of factors including, for example and without limitation, a hearing participant's individual health concerns, access to video conference technology, whether a party has delayed or refused to appear in person, and whether proceeding by video conference would materially disadvantage any party.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in

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

general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</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, by continuing to provide greater harmonization between the Exchange rules and FINRA rules of similar purpose,<sup>9</sup> resulting in less burdensome and more efficient regulatory compliance. The proposal also deletes expired references to temporary amendments.

The Exchange believes that the proposed rule change protects investors and the public interest by permitting the use of broadly available technology to allow hearings to proceed by video conference under certain circumstances. The Exchange's disciplinary and eligibility proceedings and other review processes serve a critical role in providing investor protection and maintaining fair and orderly markets by, for example, sanctioning misconduct and preventing further customer harm by members and associated persons. The proposed rule change would encourage the prompt resolution of these cases while preserving a fair process.

The proposed rule change promotes efficiency by permitting hearings to occur by video conference in situations where the hearings would otherwise be postponed for an uncertain period of time. As discussed, COVID-19 necessitated the Exchange to propose the temporary amendments, which were extended due to the continuing health risks of COVID-19, as well as limitations on travel, quarantine requirements, and other logistical challenges to safely conducting hearings in person. The proposed rule change further promotes efficiency by giving

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<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See Securities Exchange Act Release No. 97403 (April 28, 2023), 88 FR 28645 (May 4, 2023) (SR-FINRA-2023-008).

OHO and the ERC authority to act quickly if a future unexpected event impaired their ability to conduct in-person hearings safely.

The proposed rule change also serves to provide a fair procedure for the disciplining of members and persons associated with members by allowing hearings to proceed by video conference not only due to public health or safety reasons, but also at a party or the parties' request for reasons particular to them. The Adjudicator could allow a hearing to proceed by video conference in the exercise of reasonable discretion and subject to procedural safeguards that ensure fairness.

Thus, the proposed rule change represents a significant step toward modernizing the Exchange's procedures in a manner that preserves in-person hearings, but allows for the use of high quality, secure and user-friendly video conference technology under certain circumstances.

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 is rather intended solely to allow for the use of video conference for reasons in addition to COVID-19 where unforeseen events make appearing in person difficult or impracticable. In its filing, FINRA provided an economic impact assessment analyzing the potential impacts of the proposed rule change, including anticipated costs, benefits, and distributional and competitive effects.<sup>10</sup>

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<sup>10</sup> See Securities Exchange Act Release No. 97403 (April 28, 2023), 88 FR 28645 (May 4, 2023) (SR-FINRA-2023-008).

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)(iii) of the Act<sup>11</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>12</sup>

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:

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.



Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NASDAQ-2024-085 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-2024-085. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly.

We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-085 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

**Vanessa A. Countryman,**

*Secretary.*

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<sup>13</sup> 17 CFR 200.30-3(a)(12).