

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-102385; File No. SR-NASDAQ-2024-083)

February 10, 2025

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving Proposed Rule Change to Assume Operational Responsibility for Litigating Contested Disciplinary Proceedings Arising Out of Nasdaq-Led Investigations and Enforcement Activities and Amend Rules 9131 and 9810 (the Nasdaq Discipline Rules) to Grant Nasdaq Regulation the Same Authority as FINRA In Contested Disciplinary Proceedings to Serve Complaints and Memoranda of Authority

I. Introduction

On December 11, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposal to assume operational responsibility for litigating certain contested disciplinary proceedings that are currently litigated by the Financial Industry Regulatory Authority (“FINRA”) and to amend Exchange rules to grant Nasdaq Regulation the same authority as FINRA in contested disciplinary proceedings to serve complaints and memoranda of authority. The proposed rule change was published for comment in the Federal Register on December 30, 2024.³ The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

Nasdaq states that, since it became a national securities exchange, it has contracted with FINRA through regulatory service agreements (“RSAs”) to perform certain regulatory functions

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 102029 (December 23, 2024), 89 FR 106689 (“Notice”).

on its behalf.⁴ In April 2019, the Exchange reallocated operational responsibility from FINRA to Nasdaq Regulation for certain investigative and enforcement activity, including the investigation and enforcement responsibilities for conduct occurring on The Nasdaq Options Market,⁵ and investigation and enforcement responsibilities for conduct occurring solely on Nasdaq's equity market (i.e., conduct not also on non-Nasdaq affiliated equities markets).⁶ In March 2020, the Commission approved Nasdaq's proposal to reallocate operational responsibility from FINRA to Nasdaq Regulation for litigating a subset of contested disciplinary proceedings.⁷ Specifically, the approved change enabled Nasdaq Regulation to litigate contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities that FINRA was either unwilling or unable to handle due to "strained resources or other similar limitations."⁸ FINRA continued to litigate the remaining contested disciplinary proceedings under Nasdaq's supervision.⁹

Nasdaq proposes to further expand its enforcement authority by enabling Nasdaq Regulation to litigate contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities in the first instance, regardless of FINRA's willingness or ability to handle the proceedings.¹⁰ The Exchange proposes to retain the option to refer cases to FINRA

⁴ See Notice, supra note 3, at 106690. Nasdaq, as a national securities exchange, is required pursuant to Section 6 of the Act to enforce its members' compliance with federal securities laws and rules and Exchange rules. As stated in the Notice, Nasdaq is required to have a regulatory program that includes the investigation and prosecution of rule violations. Id.

⁵ The Exchange states that, as appropriate, Nasdaq Regulation coordinates with other SROs to avoid regulatory duplication in cross-market investigations. Id.

⁶ See Notice, supra note 3, at 106690 n.6 (citing Securities Exchange Act Release No. 85505 (April 3, 2019), 84 FR 14170, 14171 (April 9, 2019)).

⁷ Id. at 106690 n.9 and accompanying text. See also Securities Exchange Act Release No. 88516 (March 30, 2020), 85 FR 19042 (April 3, 2020).

⁸ Id. at 106690.

⁹ Id.

¹⁰ Id.

“if Nasdaq’s resources are constrained or if another circumstance warrants FINRA litigating a contested disciplinary proceeding.”¹¹ The Exchange represents that the disciplinary process and procedural protections currently afforded to Nasdaq members in contested disciplinary proceedings would remain the same.¹² The Exchange would continue to use FINRA’s Office of Hearing Officers to administer the hearing process for all contested disciplinary proceedings, and the disciplinary process rules would remain the same.¹³ Nasdaq represents that FINRA will continue to perform certain functions pursuant to an RSA, including the handling of FINRA-led investigation and enforcement activities.¹⁴

Nasdaq also proposes amendments to its Code of Procedure set forth in General 5.¹⁵ Currently, General 5, Rule 9131(a) permits only FINRA to serve a complaint.¹⁶ Similarly, General 5, Rule 9810(b)(2) grants FINRA the authority to serve a memorandum of authorities in support of a temporary cease-and-desist request.¹⁷ The Exchange proposes to amend both rules to grant Nasdaq Regulation the same authority as FINRA to serve both complaints and memoranda of authorities.¹⁸

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

¹¹ Id. at 106691. FINRA would litigate such cases under Nasdaq’s supervision.

¹² Id. at 106690-91.

¹³ Id.

¹⁴ Id. at 106691. In addition to work performed pursuant to an RSA, FINRA also performs work for matters covered by agreements to allocate regulatory responsibility under Rule 17d-2 of the Act.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

securities exchange.¹⁹ In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5) and 6(b)(7) of the Act.²⁰ As noted above, since it became a national securities exchange, the Exchange has contracted with FINRA through RSAs to perform certain regulatory functions on its behalf.²¹ Nasdaq General 2, Section 7 requires that unless Nasdaq obtains prior Commission approval, the regulatory functions subject to the RSAs in effect at the time Nasdaq began to operate as a national securities exchange must at all times continue to be performed by FINRA or an affiliate thereof or by another independent self-regulatory organization. As noted earlier, the Commission previously approved a proposal where, although FINRA would retain responsibility in the first instance for litigating contested disciplinary proceedings, Nasdaq Regulation was permitted under certain circumstances (e.g., FINRA's resources are strained) to litigate contested disciplinary proceedings arising from Nasdaq-led investigations and enforcement activities.²² The Exchange proposes to further reallocate operational responsibility so that Nasdaq Regulation would be responsible in the first instance for litigating contested disciplinary proceedings arising from Nasdaq-led investigations and enforcement actions and would refer cases to FINRA if circumstances warrant (e.g., Nasdaq's resources are strained).²³

The Commission believes that by directly handling contested disciplinary proceedings arising from Nasdaq-led investigations and enforcement actions, Nasdaq could continue to leverage its knowledge of its markets and members, its experience with investigation and

¹⁹ In approving this proposed rule change the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰ 15 U.S.C. 78f(b)(5), (7).

²¹ See supra note 4 and accompanying text.

²² See supra note 7-9 and accompanying text.

²³ See supra note 10 and accompanying text.

enforcement work, and its surveillance, investigation, and enforcement staff, to litigate contested disciplinary proceedings that it has retained more effectively, efficiently, and with immediacy.²⁴ Furthermore, as the Exchange states, by assuming operational responsibility for contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement actions, the Exchange may be able to deliver increased efficiencies in the regulation of its market and to provide more prompt and effective regulation by, for example, avoiding the need for FINRA's enforcement department to familiarize itself with Nasdaq's investigation, which could enable timely and more efficient action.²⁵ The Commission also notes that, as discussed above, the proposal would not change or alter in any way the disciplinary process around how contested matters are handled, or the procedural protections afforded to Nasdaq members in contested disciplinary proceedings, and FINRA's Office of Hearing Officers will continue to administer the hearing process for all contested disciplinary proceedings.²⁶ The Commission believes that granting Nasdaq Regulation the same authority as FINRA to serve complaints and memoranda of authorities could also facilitate quicker and more efficient litigation.²⁷ For the foregoing reasons, Commission finds that the proposals are consistent with the Act.

²⁴ See Notice, supra note 3, at 106690-91.

²⁵ Id.

²⁶ Id.

²⁷ Id. at 106691.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-NASDAQ-2024-083) be, and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Sherry R. Haywood,

Assistant Secretary.

²⁸ See id.

²⁹ 17 CFR 200.30-3(a)(12).