

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104443; File Nos. SR-NASDAQ-2025-080; SR-BX-2025-024; SR-GEMX-2025-27; SR-MRX-2025-23; SR-Phlx-2025-56; SR-ISE-2025-31]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq MRX, LLC; Nasdaq PHLX LLC; Nasdaq ISE, LLC; Order Approving Proposed Rule Change to Amend the Amended and Restated Certificate of Incorporation and By-Laws of Parent Corporation, Nasdaq, Inc.

December 18, 2025.

I. Introduction

On September 26, 2025, each of The Nasdaq Stock Market LLC (“NASDAQ Exchange”); Nasdaq BX, Inc. (“BX”); Nasdaq GEMX, LLC (“GEMX”); Nasdaq MRX, LLC (“MRX”); Nasdaq PHLX LLC (“PHLX”); and Nasdaq ISE, LLC (“ISE” and, collectively, the “Exchanges”), 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 proposed rule changes (the “Proposals”) with respect to the Amended and restated Certificate of Incorporation (“Certificate”) and By-Laws (“By-Laws”) of their parent corporation, Nasdaq, Inc. (“Nasdaq”). The Proposals amend the Certificate to align with certain amendments to the Delaware General Corporation Law (“DGCL”) passed in 2022 and update the By-Laws to reflect recent changes in law and best practices. The Proposals were published for comment in the Federal Register on October 1, 2025.³ On November 3, 2025, pursuant to Section 19(b)(2) of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release Nos. 104108 (September 26, 2025), 90 FR 47418 (SR-NASDAQ-2025-080) (“NASDAQ Exchange Notice”), 104110 (September 26, 2025), 90 FR 47428 (SR-BX-2025-024), 104118 (September 29, 2025), 90 FR 47444 (SR-GEMX-2025-27), 104120 (September 29, 2025), 90 FR

Act,⁴ the Commission designated a longer period within which to approve the proposed rule changes, disapprove the proposed rule changes, or institute proceedings to determine whether to disapprove the proposed rule changes.⁵ The Commission did not receive any comment letters on the Proposals. This order approves the Proposals.

II. Description of the Proposals

The Exchanges propose amendments to the Certificate to exculpate covered officers from monetary liability for breach of fiduciary duty, similar to the existing treatment of directors.⁶ As discussed more fully in the Notices, the Exchanges state that the proposed amendments would update the Certificate to reflect amendments to the DGCL that enable companies to limit the liability of certain officers in narrow circumstances.⁷

The Exchanges also propose amendments to the following provisions of the By-Laws: Articles III (Meetings of Stockholders);⁸ IV (Board of Directors);⁹ VII (Officers, Agents, and Employees);¹⁰ VIII (Indemnification);¹¹ IX (Capital Stock);¹² X (Miscellaneous Provisions);¹³

47373 (SR-MRX-2025-23), 104109 (September 26, 2025), 90 FR 47401 (SR-Phlx-2025-56); 104115 (September 29, 2025), 90 FR 47461 (SR-ISE-2025-31) (collectively, “Notices”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 104173, 90 FR 51424 (designating December 30, 2025, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule changes).

⁶ See, e.g., NASDAQ Exchange Notice, supra note 3, at 47419.

⁷ See, e.g., id. (discussing related corporate governance trends under Delaware law and the potential consequences to Nasdaq from failing to adopt the proposed changes). See also infra notes 38 and 39 and accompanying text.

⁸ See NASDAQ Exchange Notice, supra note 3, at 47419-22.

⁹ See id. at 47422-24.

¹⁰ See id. at 47424-25.

¹¹ See id. at 47425.

¹² See id. at 47425-26.

¹³ See id. at 47426.

XI (Amendments and Emergency By-Laws);¹⁴ and XIII (Forum Selection);¹⁵ as well as other non-substantive changes.¹⁶ These amendments are summarized below and discussed more fully in the Notices.

Proposed amendments to Article III

- Specify the scope of information that may be requested in connection with a stockholder nominee for director to provide that Nasdaq may require any other information to determine whether the proposed nominee is qualified under the Certificate, the By-Laws, and other applicable rules, laws, and regulations.
- Amend the information requirements for notices to Nasdaq from a Proposing Person¹⁷ regarding nominations or other business to be considered at an annual meeting of stockholders. Such notices require “a description of any agreement, arrangement or understanding with respect to the nomination or proposal between and among such stockholder and/or such beneficial owners, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing” (emphasis added).¹⁸ The amendments remove the references to others “acting in

¹⁴ See id.

¹⁵ See id.

¹⁶ See id. at 47426-27. These changes are either typographical corrections or otherwise administrative or clarifying changes (such as changing a reference to “shareholder” to “stockholder” to more closely reflect terminology of the By-Laws).

¹⁷ Section 3.1(c) of the By-Laws defines “Proposing Person” as (i) the stockholder providing the notice of business or the notice of the nomination, as applicable, proposed to be brought before an annual meeting, (ii) any beneficial owner or beneficial owners, if different, on whose behalf such business is proposed to be brought before the meeting or the notice of the nomination proposed to be made at the meeting is made, as applicable, and (iii) any affiliate or associate (each within the meaning of Rule 12b-2 under the Act for purposes of these By-Laws) of such stockholder or beneficial owner.

¹⁸ See NASDAQ Exchange Notice, supra note 3, at 47420; proposed By-Laws Section 3.1(b)(iii)(C).

concert.”¹⁹

- Add a requirement that a Proposing Person’s notice must include a representation as to whether the Proposing Person intends, or is part of a group which intends, “to solicit proxies or votes in support of any proposed nominee in accordance with Rule 14a-19²⁰ promulgated under the Act.”²¹
- Limit the number of nominees that a Proposing Person may nominate for election at the annual meeting in certain instances to the number of directors to be elected at such annual meeting.
- Remove a reference to the binding nature of the Board’s²² determination with respect to whether a special meeting request is in proper form, which aligns the By-Laws with current Delaware corporate practices.²³
- Require that the chairman who presides over stockholder meetings shall be an officer or director of Nasdaq.

Proposed amendments to Article IV

- Provide Nasdaq with greater flexibility to include “Issuer Directors” on the Board by

¹⁹ The Exchanges propose a similar amendment to By-Law Section 3.2(a), which addresses requirements for requesting a special meeting of the stockholders, including procedures for determining the requisite percentage of stockholders necessary to support a special meeting request. See NASDAQ Exchange Notice, supra note 3, at 47421.

²⁰ 17 CFR 240.14a-9 (referred to as the “universal proxy rule”).

²¹ See, e.g., NASDAQ Exchange Notice, supra note 3, at 47421; proposed By-Laws Section 3.1(b)(iii)(O)(3). Other amendments to the By-Laws under the Proposals also clarify when the universal proxy rule would apply. See, e.g., NASDAQ Exchange Notice, supra note 3, at 47421; proposed By-Laws Section 3.3(a) (relating to when Nasdaq would disregard nominees proposed by a stockholder under the universal proxy rule, if the stockholder has failed to comply with the rule).

²² “Board” is defined in Article I(c) of the By-Laws as the Board of Directors of Nasdaq.

²³ The Exchanges propose similar deletions of references to the decisions made in the “sole discretion” of the Board or to the finality or “binding” nature of decisions by the Board (or persons authorized by the Board), any committees thereof, or the chairman of a meeting thereof throughout the proposed amendments.

removing the current restriction that the Board may not include more than two such directors.²⁴

- Amend the Board quorum and voting provisions to clarify how a quorum is calculated and the process for the adjournment of meetings.
- Amend how notice of meetings may be given to, or waived by, directors (e.g., eliminate outdated forms of communication, such as telegram, telefax, cable, and radio).
- Specify that Nasdaq is opting into Section 141(c)(2) of the DGCL, which provides Nasdaq greater flexibility with respect to the formation and powers of Board committees, including, for example, allowing greater delegations of authority.²⁵
- Remove limitations on the ability of Board committees to take certain actions, such as the authorization of preferred stock designations.
- Remove the one-year limitation on the terms of committee members.²⁶
- Remove duplicative language in the By-Laws that specifies that members of the Nominating & Governance Committee may be removed by “majority vote of” the Board, because the By-Laws already separately provide the voting standards for all

²⁴ “Issuer Director” is defined in Article I(o) of the By-Laws.

²⁵ See, e.g., NASDAQ Exchange Notice, supra note 3, at 47421-23.

²⁶ See, e.g., NASDAQ Exchange Notice, supra note 3, at 47423. The Proposals also remove the requirement that the chair of Nasdaq’s Audit Committee must be a Public Director (as defined in Article I of the By-Laws). See id. The Exchanges state that the chair of the Audit Committee must still satisfy prescribed independence standards. See id. With respect to the Audit Committee, the Proposals would amend the By-Laws to provide flexibility for such committee to be renamed from time to time or for any successor of such committee delegated with similar duties to be known as the respective committee. See, e.g., NASDAQ Exchange Notice, supra note 3, at 47423-24; proposed By-Law Article I(p) and Section 4.13(g). The Proposals make similar changes with respect to the Nominating & Governance Committee. See proposed By-Law Article I(p).

decisions of the Board.²⁷

- Modify the quorum requirement for Board committees to specify that a majority of the members of a committee then serving in office, rather than a majority of total members on the committee, as is currently the case, shall constitute a quorum.²⁸

Proposed amendments to Article VII

- Delete outdated references to Nasdaq's corporate structure, including references to having one President that is a director, or that has executive authority over the entire company, and add provisions that contemplate more than one president.
- Make the specified list of officers to be elected by the Board permissive rather than mandatory.
- Modify the process and authority for appointing Vice Presidents and providing that each Vice President shall have all powers and duties usually incident to the office of a Vice President, except as specifically limited.
- Modify who may assign powers and duties to Presidents, Vice Presidents, the Secretary, and the Treasurer.²⁹
- Clarify that the obligation to pay claims or expenses related to the indemnification of directors, officers, employees, and agents is limited to those claims and expenses not prohibited by applicable law.³⁰

Proposed Amendments to Article IX

- Broaden the scope of officers authorized to sign stock certificates.

²⁷ See, e.g., NASDAQ Exchange Notice, supra note 3, at 47424.

²⁸ See, e.g., NASDAQ Exchange Notice, supra note 3, at 47424.

²⁹ See id.

³⁰ See, e.g., NASDAQ Exchange Notice, supra note 3, at 47425.

- Provide that applicable law will control whether Nasdaq is able to treat stockholders of record as shown on the stock ledgers as owners thereof and as the persons entitled to vote such shares and to receive notices, as well as when Nasdaq is bound to recognize any equitable claim to, or interest in, any shares on the part of any other person.
- Provide that Nasdaq shall be authorized, rather than the Board or an authorized committee thereof, to take certain actions with respect to lost, stolen, or destroyed certificates.

Proposed amendments to Article X

- Replace an existing provision regarding the authority for the execution of contracts and other documents with a provision that more closely reflects Nasdaq's current policies and procedures on signatory authority.
- Replace an existing provision regarding the required form of records with a provision that conforms to updated Delaware law.³¹

Proposed amendments to Article XI

- Amend the By-Laws to reflect changes to the emergency by-law provisions of the DGCL.³²

Proposed amendments to Article XIII

- Provide a new forum selection provision.³³

III. Discussion and Commission's Findings

³¹ See id.

³² See id.

³³ See id. The Exchanges note that the by-laws of Cboe Global Markets, Inc., as well as those of CME Group, Inc., contain forum selection provisions similar to those proposed by the Exchanges. See id. at 47426, n.75.

After careful review, the Commission finds that the Proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.³⁴ Specifically, the Commission finds that the Proposals are consistent with Section 6(b) of the Act³⁵ in general, and, in particular, with the requirement of Section 6(b)(1)³⁶ that a national securities exchange be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. The Commission also finds that the Proposals are consistent, in particular, with the requirement of 6(b)(5) that the rules of a national securities exchange are designed, in general, to protect investors and the public interest.³⁷

The Commission finds that the Proposals are designed to help to ensure that the Exchanges are so organized and have the capacity to be able to carry out the purposes of the Act, and to protect investors and the public interest. The Exchanges state that the proposed changes to the Certificate are in the public interest as they would update it consistent with developments in DGCL that enable companies incorporated in Delaware to limit the liability of certain of their officers in narrow circumstances. As discussed in the Notices, the Exchanges also state that such amendments are increasingly common for public companies; that the number of stockholder proposals calling for such amendments have continued to increase since 2022 when the DGCL was amended; and that the majority of these proposals have been approved by wide margins.³⁸

³⁴ Additionally, in approving the Proposals, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁵ 15 U.S.C. 78f(b).

³⁶ 15 U.S.C. 78f(b)(1).

³⁷ 15 U.S.C. 78f(b)(5).

³⁸ See, e.g., NASDAQ Exchange Notice, supra note 3, at 47419, n. 3, and accompanying text.

The Exchanges state that failing to adopt such amendments could potentially expose Nasdaq to higher litigation expenses and impact its recruitment and retention of officer candidates.³⁹

The Commission also finds that proposed amendments to the By-Laws are consistent with the Act. With respect to the proposed changes to the By-Laws, the Exchanges state that:

- the proposed changes to Article III are in the public interest as they would update the By-Laws and conform them to current practices and developments in DGCL;
- the proposed changes to Article IV are either clarifying in nature or otherwise purport to refine governance practices by providing Nasdaq with greater flexibility with respect to such matters as the qualifications of directors, quorum and voting, or otherwise update such provisions to make them more consistent with current governance practices as well as the policies and procedures of Nasdaq;
- the proposed changes to Articles VII through XIII are in the public interest and consistent with the protection of investors as they are designed to accomplish several objectives, including updating the By-Laws to conform with current practices or recent developments in Delaware law, aligning the By-Laws with current Nasdaq policies and procedures, and enhancing the clarity of the By-Laws, thus facilitating their proper application and use; and
- the remaining changes can be characterized as non-substantive, because they are designed to either correct typographical errors, conform Nasdaq governance

³⁹ See, e.g., NASDAQ Exchange Notice, *supra* note 3, at 47419,

documents to terminology in the By-Laws, remove obsolete text, or otherwise make non-substantive revisions to the By-Laws to make them clearer and easier to use.⁴⁰

The Commission finds that the proposed changes are designed to update the By-Laws for conformance with DGCL and litigation and corporate governance trends, conform the By-Laws with Nasdaq's corporate structure and policies and procedures, or make other clarifying and non-substantive changes. With respect to the proposed changes to Nasdaq's Audit Committee structure,⁴¹ the Exchanges states that such committee must, in any event, satisfy other applicable independence standards.⁴² Certain of the proposed amendments would also clarify when the universal proxy rule would apply.⁴³ Similar to the Exchanges' proposed amendments to the Certificate, the proposed amendments to the By-Laws should help to ensure that the Exchanges are so organized and have the capacity to be able to carry out the purposes of the Act, and are designed to protect investors and the public interest.⁴⁴

IV. Conclusion

For the foregoing reasons, the Commission finds that the Proposals are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

⁴⁰ See, e.g., NASDAQ Exchange Notice, supra note 3, at 47427.

⁴¹ See supra note 26.

⁴² See, e.g., NASDAQ Exchange Notice, supra note 3, at 47423. By-Laws Section 4.13(g), currently and as proposed, requires that Nasdaq's Audit Committee be comprised of three or more directors, each of whom shall be an independent director within the meaning of the rules of the NASDAQ Stock Market and Section 10A of the Act.

⁴³ See, e.g., NASDAQ Exchange Notice, supra note 3, at 47421-22.

⁴⁴ The Commission has previously stated that certain provisions in the Nasdaq governing documents are designed to ensure that each self-regulatory subsidiary can carry out its regulatory obligations. See, e.g., Securities Exchange Act Release No. 78119 (June 21, 2016) 81 FR 41611 (approving proposed rule changes by ISE, GEMX, and MRX relating to their acquisition by Nasdaq) at 41613. Such provisions are not impacted by the Proposals.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁴⁵ that the Proposals (SR-NASDAQ-2025-080; SR-BX-2025-024; SR-GEMX-2025-27; SR-MRX-2025-23; SR-Phlx-2025-56; SR-ISE-2025-31) be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

Sherry R. Haywood,

Assistant Secretary.

⁴⁵ 15 U.S.C. 78s(b)(2).

⁴⁶ 17 CFR 200.30-3(a)(12).