

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88516; File No. SR-NASDAQ-2020-007)

March 30, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Assume Operational Responsibility for Certain Enforcement Functions Currently Performed by FINRA under the Exchanges Authority and Supervision

I. Introduction

On February 3, 2020, The Nasdaq Stock Market LLC (“Exchange” or “Nasdaq”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to assume operational responsibility for certain enforcement functions currently performed by the Financial Industry Regulatory Authority (“FINRA”) under the Exchange’s authority and supervision. The proposed rule change was published for comment in the Federal Register on February 20, 2020.<sup>3</sup> On March 24, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change.<sup>4</sup> The Commission did not receive any comment letters on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and

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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> See Securities Exchange Act Release No. 88209 (February 13, 2020), 85 FR 9870.

<sup>4</sup> In Amendment No. 1, the Exchange: (1) clarified that the Exchange itself, not a third-party, would be assuming operational responsibility for certain contested disciplinary matters; (2) clarified that FINRA’s Office of Hearing Officers would continue to administer the hearing process for all contested disciplinary matters; and (3) made other technical, clarifying, and conforming changes. Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nasdaq-2020-007/srnasdaq2020007-6990674-214688.pdf>.

is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Proposal

According to the Exchange, since it became a national securities exchange, the Exchange has contracted with FINRA through various regulatory services agreements to perform certain regulatory functions on its behalf.<sup>5</sup> At the same time, the Exchange retained operational responsibility for a number of regulatory functions, including real-time surveillance, qualification of companies listed on the Exchange, and most surveillance related to its affiliated options markets.<sup>6</sup> 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,<sup>7</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>8</sup> According to the Exchange, notwithstanding the changes made in April 2019, FINRA continues to perform certain functions pursuant to an RSA,<sup>9</sup> including the handling of contested disciplinary proceedings arising out of Nasdaq Regulation-led investigation and enforcement activities.

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<sup>5</sup> See Amendment No. 1, supra note 4 at 4.

<sup>6</sup> See id.

<sup>7</sup> According to the Exchange, 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>8</sup> Securities Exchange Act Release No. 85505 (April 3, 2019), 84 FR 14170 (April 9, 2019).

<sup>9</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.

The Exchange now proposes to reallocate operational responsibility from FINRA to Nasdaq Regulation for certain enforcement activity, specifically, the handling of certain contested disciplinary proceedings.<sup>10</sup> The Exchange states that it anticipates handling those contested disciplinary proceedings that FINRA is unable or unwilling to handle due to strained resources or other similar limitations.<sup>11</sup> Furthermore, the Exchange states that in all cases, the Exchange will continue to use FINRA's Office of Hearing Officers to administer the hearing process, and that the rules applicable to the disciplinary process will remain the same.<sup>12</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>13</sup> and, in particular, with Sections 6(b)(5) and 6(b)(7) of the Act.<sup>14</sup> As noted above, since it became a national securities exchange, the Exchange has contracted with FINRA through various regulatory services agreements to perform certain regulatory functions on its behalf.<sup>15</sup> Nasdaq General Rule 1, Section 7 requires that, unless Nasdaq obtains prior Commission approval, the regulatory functions subject to the

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<sup>10</sup> See Amendment No. 1, supra note 4, at 6. The Exchange states that Nasdaq Regulation's decision to assume operational responsibility for any given contested disciplinary proceeding will be made on a case by case basis. See Amendment No. 1, supra note 4, at 6, fn.13. Furthermore, the Exchange states that for those contested disciplinary proceedings that Nasdaq Regulation does not assume operational responsibility for, the Exchange will continue to use FINRA to litigate those matters. See Amendment No. 1, supra note 4, at 6.

<sup>11</sup> See Amendment No. 1, supra note 4, at 6.

<sup>12</sup> See Amendment No. 1, supra note 4, at 6, fn.12; 7.

<sup>13</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(5), (7).

<sup>15</sup> See supra note 5 and accompanying text.

regulatory services agreement in effect at the time when Nasdaq began to operate 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. The Exchange now proposes to reallocate operational responsibility for the certain contested disciplinary activities discussed above from FINRA to Nasdaq Regulation.<sup>16</sup>

The Commission believes that the Exchange could leverage its knowledge of its markets and members, its experience with investigation and enforcement work, and its surveillance, investigation, and enforcement staff, in helping to effectively, efficiently, and with immediacy, litigate certain contested disciplinary proceeds.<sup>17</sup> 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, and FINRA's Office of Hearing Officers will continue to administer the hearing process for all contested disciplinary proceedings.<sup>18</sup> Furthermore, as the Exchange states, by assuming operational responsibility for certain contested disciplinary proceedings, the Exchange may be able to deliver increased efficiencies in the regulation of its markets and to act promptly and provide more effective regulation by enabling timely and more efficient action.<sup>19</sup> Accordingly, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

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<sup>16</sup> See supra notes 10 and 11 and accompanying text.

<sup>17</sup> See Amendment No. 1, supra note 4, at 7.

<sup>18</sup> See id.

<sup>19</sup> See Amendment No. 1, supra note 4, at 7, 9.

#### IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 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 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, 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.

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-2020-007 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the Federal Register. The Commission notes that, in Amendment No. 1, the Exchange provided additional information to clarify and support the proposal, and did not materially change the substance of the proposal. The Commission also notes that the original proposal was subject to a 21-day comment period and no comments were received. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

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<sup>20</sup> 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change (SR-NASDAQ-2020-007), as modified by Amendment No. 1 be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>21</sup> Id.

<sup>22</sup> 17 CFR 200.30-3(a)(12).