



**Brett M. Kitt**

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March 7, 2019

Mr. Brent Fields  
Secretary  
Office of the Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: Application for Exemption from Section 19(b) of the Securities Exchange Act of 1934

Dear Mr. Fields:

Nasdaq BX, Inc. (“BX”), Nasdaq Phlx LLC (“Phlx”), Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”), and Nasdaq MRX, LLC (“MRX”) self-regulatory organizations (each an “Affiliated Exchange” and, collectively, the “Affiliated Exchanges”)<sup>1</sup> respectfully request that the Securities and Exchange Commission (“SEC” or “Commission”) exercise its authority under Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>2</sup> and Rule 0-12<sup>3</sup> thereunder, and grant the Affiliated Exchanges an exemption from the rule filing requirements of Section 19(b) of the Exchange Act with respect to the rules related to connectivity products and services shared among the Affiliated Exchanges.<sup>4</sup>

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<sup>1</sup> The person listed above is the designated contact person with respect to all five of the Affiliated Exchanges’ exemption applications and will be available at the above-listed address and telephone number to answer any questions that the Commission may have regarding the applications.

<sup>2</sup> U.S.C. 78mm.

<sup>3</sup> See 17 CFR 240.0-12; Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998).

<sup>4</sup> This request replaces and supersedes a prior request that the Affiliated Exchanges filed with the Commission on December 19, 2018.

Recently, the Affiliated Exchanges each filed a proposed rule change<sup>5</sup> under Section 19(b) of the Exchange Act to incorporate by reference the rules contained in the Nasdaq Stock Market, LLC (“Nasdaq”) General 8 Rules entitled “Connectivity,” as such rules may be in effect from time to time (the “General 8 Rules”). Nasdaq’s General 8 Rules relates to colocation, connectivity, and direct connectivity services and products, including connectivity to third-party services and market data feeds (“Services”). In the proposed rule changes, the Affiliated Exchanges propose to incorporate by reference Nasdaq’s General 8 Rules into General 8 of their respective rulebooks, and thus make these rules applicable to their members, member organizations (as applicable), associated persons, and other persons who subscribe to such Services (“Subscribers”). When the proposed rule changes become operative, Subscribers of Affiliated Exchanges’ Services will be required to comply with Nasdaq’s General 8 Rules as though such rules are fully set forth within each of the Affiliated Exchanges’ rulebooks.

At this time, the Affiliated Exchanges request that the SEC exercise its authority under Section 36 of the Exchange Act and Rule 0-12 thereunder and grant the Affiliated Exchanges an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to the Affiliated Exchanges’ rules that are effected solely by virtue of a change to Nasdaq’s General 8 Rules that are incorporated by reference. Specifically, the Affiliated Exchanges request that they be permitted to incorporate by reference changes made to Nasdaq’s General 8 Rules that are cross-referenced in the Affiliated Exchanges’ rules without the need for each Affiliated Exchange to separately file, pursuant to Section 19(b) of the Exchange Act, the same proposed rule change as filed by Nasdaq.

The Affiliated Exchanges believe that this exemption is appropriate because it will result in the Affiliated Exchanges’ rules being consistent with the relevant cross-referenced Nasdaq rules at all times. The Affiliated Exchanges and Nasdaq offer Services on a shared basis. In other words, the Affiliated Exchanges and Nasdaq only charge their Subscribers once for these shared Services, regardless of which and how many exchanges a Subscriber connects to. Without such an exemption, Subscribers could inadvertently become subject to different fee schedules if, for example, an amendment to a cross-referenced Nasdaq rule could be approved prior to an Affiliated Exchange filing its corresponding proposed rule change.

Nasdaq’s General 8 Rules are not trading rules and instead, as mentioned above, relate to Services.<sup>6</sup> Accordingly, the Affiliated Exchanges hereby request that the Commission exempt

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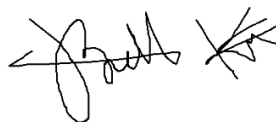
<sup>5</sup> See SR-BX-2018-064, SR-PHLX-2018-82, SR-ISE-2018-99, SR-GEMX-2018-43, and SR-MRX-2018-40.

<sup>6</sup> The Nasdaq’s General 8 Rules are categories of rules (i.e., do not cherry pick individual rules within a category) that are not trading rules. See 17 CFR 200.30-3(a)(76) (contemplating such requests). In addition, several other self-regulatory organizations (collectively, the “SROs”) incorporate by reference certain regulatory rules of another SRO and have received from the Commission similar exemptions from Section 19(b) of the Exchange Act. See e.g., Securities Exchange Act Release Nos. 72650 (July 22, 2014), 79 FR 44075 (July 29, 2014) (order granting exemptive requests from NASDAQ OMX BX, Inc. and The NASDAQ Stock Market LLC relating to rules of NASDAQ OMX PHLX LLC incorporated by reference); 61534 (February 18, 2010), 75 FR 8760

the Affiliated Exchanges from the Section 19(b) requirement that these exchanges separately file a proposed rule change each time Nasdaq amends its General 8 Rules. As a condition of this exemption, the Affiliated Exchanges agree to provide written notice to its Subscribers, including member and member organization, whenever Nasdaq proposes a change to its General 8 Rules.<sup>7</sup> Such notice will alert the Affiliated Exchanges' Subscribers, including members and member organizations, to the proposed Nasdaq rule change and give them an opportunity to comment on the proposal. The Affiliated Exchanges will similarly inform Subscribers, including members and member organization, in writing when the SEC approves any such proposed changes.

Based on the above, the Affiliated Exchanges believe that the requested exemption is appropriate and consistent with the protection of investors. Should you have any questions regarding this exemption request, please contact Brett Kitt at (301) 978-8132.

Respectfully,



Brett M. Kitt  
Senior Associate General Counsel

cc: David Shillman, Associate Director, SEC Division of Trading and Markets  
John Roeser, Associate Director, SEC Division of Trading and Markets  
Molly Kim, SEC Division of Trading and Markets

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(February 25, 2010) (order granting BATS Exchange, Inc.'s exemptive request relating to rules incorporated by reference by the BATS Exchange Options Market rules); 67256 (June 26, 2012), 77 FR 39277, 39286 (July 2, 2012) (order approving SR-BX-2012-030 and granting exemptive request relating to rules incorporated by reference by the BX Options rules); and 57478 (March 12, 2008), 73 FR 14521, 14539-40 (March 18, 2008) (order approving SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080, and granting exemptive request relating to rules incorporated by reference by The NASDAQ Options Market).

<sup>7</sup> The Affiliated Exchanges will provide such notice via a posting on the same website location where the Affiliated Exchanges post their own rule filings pursuant to Rule 19b-4(l) within the timeframe required by such Rule. The website posting will include a link to the location on Nasdaq's website where the applicable proposed rule change is posted. See 17 CFR 200.303(a)(76)(iii).