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June 15, 2020

Ms. Vanessa Countryman  
Secretary  
Office of the Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

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

Dear Ms. Countryman:

The 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 Affiliated Exchanges’ investigatory, disciplinary, and adjudicatory rules, which are contained in the Affiliated Exchanges’ rulebooks (“Rulebooks”), respectively, in BX’s General 5, Sections 1 and 2, and in Phlx’s, ISE’s, GEMX’s, and MRX’s General 5, Sections 2 and 3, and will incorporate by reference the rules of The Nasdaq Stock Market LLC. (“Nasdaq”), which is an affiliate of the Affiliated Exchanges.

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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> 15 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).

Recently, the Affiliated Exchanges filed proposed rule changes<sup>4</sup> under Section 19(b) of the Exchange Act to incorporate by reference the Nasdaq Rule 8000 and 9000 Series, respectively, into General 5, Sections 1 and 2 of the BX Rulebook and General 5, Sections 2 and 3 of Phlx, ISE, GEMX, and MRX Rulebooks, thus making these Nasdaq Rules applicable to their respective members, member organizations,<sup>5</sup> associated persons, and other persons subject to the Affiliated Exchange's jurisdiction. When the proposed rule change becomes operative, the Affiliated Exchanges' respective members, member organizations, associated persons, and other persons subject to the Exchange's jurisdiction will be required to comply with the Nasdaq Rule 8000 and 9000 Series as though such rules are fully set forth within the Affiliated Exchanges' Rulebooks.<sup>6</sup>

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 the Nasdaq Rule 8000 and 9000 Series that are incorporated by reference. Specifically, the Affiliated Exchanges request that they be permitted to incorporate by reference changes made to the Nasdaq Rule 8000 and 9000 Series that are cross-referenced in the Affiliated Exchanges' rules without the need for the Affiliated Exchanges 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 necessary and appropriate because it will result in the Affiliated Exchanges' rules being consistent with the relevant cross-referenced Nasdaq Rules at all times, thus ensuring that the Affiliated Exchanges and Nasdaq maintain a harmonious system of investigating, disciplining, and adjudicating the rights of their respective members, member organizations, associated persons, and other persons subject to their jurisdiction. Without such an exemption, members of the Affiliated Exchanges and Nasdaq could become subject to different standards for investigations and disciplinary actions. For

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<sup>4</sup> See Securities Exchange Act Release No. 88938 (May 26, 2020), 85 FR 33235 (June 1, 2020) (SR-BX-2020-009); Securities Exchange Act Release No. 88519 (March 31, 2020), 85 FR 19203 (April 6, 2020) (SR-Phlx-2020-09); Securities Exchange Act Release No. 89069 (June 15, 2020) (SR-ISE-2020-22) (not yet published); Securities Exchange Act Release No. 89071 (June 15, 2020) (SR-GEMX-2020-15) (not yet published); and Securities Exchange Act Release No. 89070 (June 15, 2020) (SR-MRX-2020-12) (not yet published).

<sup>5</sup> The term "member organization," as defined under Phlx General 1, Section 1(17), applies only to legal entities that are members of the Phlx exchange. See also Securities Exchange Act Release No. 82143 (November 22, 2017), 82 FR 56672 (November 29, 2017) (SR-Phlx-2017-92).

<sup>6</sup> The proposed rule changes referenced in note 4 above shall not be operative until such time as the Commission grants this request for an exemption from the rule filing requirements of Section 19(b) of the Exchange Act.

example, an amendment to a cross-referenced Nasdaq Rule could be approved prior to the Affiliated Exchanges filing their corresponding proposed rule change.

The Nasdaq Rule 8000 and 9000 Series are regulatory in nature.<sup>7</sup> Accordingly, the Affiliated Exchanges hereby request that the Commission exempt the Affiliated Exchanges from the Section 19(b) requirement that it separately file a proposed rule change each time Nasdaq amends its Rule 8000 and 9000 Series. As a condition of this exemption, the Affiliated Exchanges agree to provide written notice to their members whenever Nasdaq proposes a change to its Rule 8000 and 9000 Series.<sup>8</sup> Such notice will alert Affiliated Exchanges' members to the proposed Nasdaq rule change and give them an opportunity to comment on the proposal. The Affiliated Exchanges will similarly inform members 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 Angela Dunn at [REDACTED].

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<sup>7</sup> The Nasdaq Rule 8000 and 9000 Series 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. 83887 (August 20, 2018), 83 FR 42722 (August 23, 2018) (Order Granting Applications by Nasdaq ISE, LLC, Nasdaq GEMX, LLC, and Nasdaq MRX, LLC for Exemption Pursuant to Section 36(a) of the Exchange Act From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference); 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 (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>8</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(s) will include a link to the location on the Nasdaq's website where the applicable proposed rule change is posted. See 17 CFR 200.30-3(a)(76)(iii).

Respectfully,

/Angela S. Dunn/

Angela S. Dunn  
Principal 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  
David Dimitrious, SEC Division of Trading and Markets