

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94473; File No. SR-NASDAQ-2022-022)

March 18, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend General 3, Rule 1002, Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 8, 2022, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend General 3, Rule 1002, Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend General 3, Rule 1002, Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction. Specifically, General 3, Rule 1002(b) provides for ineligibility of certain persons for Membership or Association. General 3, Rule 1002(b)(2) provides,

Subject to such exceptions as may be explicitly provided elsewhere in the Rules, no person shall become associated with a Member, continue to be associated with a Member, or transfer association to another Member, if such person fails or ceases to satisfy the qualification requirements established by the Rules, or if such person is or becomes subject to a statutory disqualification; and no broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if any person associated with it is ineligible to be an Associated Person under this subsection.

For purposes of statutory disqualification, as such term is defined in Section 3(a)(39) of the Act,³ the Exchange proposes to specifically define the terms “person associated with a member” and “associated person” to align those terms with FINRA’s By-Laws. FINRA defines the terms “person associated with a member” or “associated person of a member” at paragraph (ee) of

³ 15 U.S.C. 78c(a)(39).

Article I, Definitions, of those By-Laws.⁴ Nasdaq currently defines an “Associated Person” within General 3, Section 1011(b) to mean any partner, officer, director, or branch manager of a Member or Applicant (or person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such Member or Applicant, or any employee of such Member or Applicant, except that any person associated with a Member or Applicant whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of the Rules.

At this time, Nasdaq proposes to adopt FINRA’s definitions of “person associated with a member” and “associated person” as provided within FINRA By-Law Article I(ee), for purposes of statutory disqualification, within new Nasdaq General 3, Rule 1002(b)(2)(A). As proposed, General 3, Rule 1002(b)(2)(A) would provide,

For purposes of “statutory disqualification” as such term is defined in Section 3(a)(39) of the Exchange Act the terms “person associated with a member” and “associated person” shall mean (1) a natural person who is registered or has applied for registration under the Rules of the Exchange; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the Exchange under its Rules; and (3) for purposes of Nasdaq General 5, Rule 8210, any other person listed in Schedule A of Form BD of a member.

⁴ FINRA By-Law Article I(ee) provides, “person associated with a member” or “associated person of a member” means: (1) a natural person who is registered or has applied for registration under the Rules of the Corporation; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with FINRA under these By-Laws or the Rules of the Corporation; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member.

By defining the terms “person associated with a member” and “associated person” substantively identical⁵ to FINRA, for purposes of statutory disqualification, the Exchange would align its application of statutory disqualification with FINRA’s process. This proposal would avoid potentially different outcomes for members of both FINRA and Nasdaq with respect to ineligibility for membership and association.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Exchange’s proposal to adopt FINRA’s definitions of “person associated with a member” and “associated person” as provided within FINRA By-Law Article I(ee), for purposes of statutory disqualification pursuant to Section 3(a)(39) of Act⁸, within new Nasdaq General 3, Rule 1002(b)(2)(A) is consistent with the Act. Aligning the terms “person associated with a member” and “associated person” with paragraph (ee) of Article I, Definitions, of FINRA’s By-Laws would avoid potentially different outcomes for members of both FINRA and Nasdaq with respect to ineligibility for membership and association as a result of statutory disqualification.

⁵ References to “Corporation” within FINRA By-Law Article I(ee) were amended to “Exchange” and references to “By-Laws and Rules of FINRA” were amended to reference Nasdaq’s Rules.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78c(a)(39).

The Exchange believes its proposal will promote just and equitable principles of trade and protect investors and the public interest by ensuring market participants that are members of both FINRA and Nasdaq are held to the same standard with respect to statutory disqualification.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange’s proposal to adopt FINRA’s definitions of “person associated with a member” and “associated person” as provided within FINRA By-Law Article I(ee) within General 3, Rule 1002(b)(2)(A), for purposes of statutory disqualification pursuant to Section 3(a)(39) of Act,⁹ does not impose an undue burden on competition. Aligning the terms “person associated with a member” and “associated person” with paragraph (ee) of Article I, Definitions, of FINRA’s By-Laws would avoid potentially different outcomes for members of both FINRA and Nasdaq with respect to ineligibility for membership and association as a result of statutory disqualification and ensure that all FINRA and Nasdaq members are held to the same standard with respect to statutory disqualification. Today, all Nasdaq members are subject to the General 3 rules.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

⁹ 15 U.S.C. 78c(a)(39).

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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. Please include File Number SR-NASDAQ-2022-022 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.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to File Number SR-NASDAQ-2022-022. 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 Web site (<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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2022-022 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).