

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82928; File No. SR-Phlx-2018-23)

March 22, 2018

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 990 Regarding the Requirements for Securities Listed on the Exchange Issued By Nasdaq, Inc. or Its Affiliates

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> notice is hereby given that on March 9, 2018, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II, 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 Rule 990 regarding the requirements for securities listed on the exchange issued by Nasdaq, Inc. (“Nasdaq”) or its affiliates.

The text of the proposed rule change is set forth below. Proposed new language is underlined; deleted text is in brackets.

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**Rule 990. Additional Requirements for Securities Listed on the Exchange Issued by Nasdaq or its Affiliates**

(a) For purposes of this Rule 990, the terms below are defined as follows:

(1) No change.

(2) “Affiliate Security” means any security issued by a Nasdaq Affiliate or any Exchange-listed option on any such security, with the exception of Trust Shares as

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

defined in Rule 803(i) and Index Fund Shares as defined in Rule 803(l).

(b) Upon initial and throughout continued listing and trading of the Affiliate Security on the Exchange, the Exchange shall:

(1) [file a report quarterly with the Securities and Exchange Commission (“Commission”)]provide a quarterly report to the Exchange’s Regulatory Oversight Committee detailing the Exchange’s monitoring of:

(A)– (B) No change.

(2) engage an independent accounting firm once a year to review and prepare a report on the Affiliate Security to ensure that the Nasdaq Affiliate is in compliance with the listing requirements contained in the Rule 800 Series and promptly [forward to the Commission]provide PHLX’s Regulatory Oversight Committee with a copy of the report prepared by the independent accounting firm.

(c) No change.

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(b) Not applicable.

(c) Not applicable.

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 Rule 990 (Additional Requirements for Securities Listed on the Exchange Issued by Nasdaq or its Affiliates) regarding the requirements for the listing of securities that are listed on the exchange issued by Nasdaq or its affiliates.

Rule 990 sets forth certain monitoring requirements that must be met throughout the continued listing of securities issued by Nasdaq or its affiliates. More specifically, Rule 990 provides that, upon initial and throughout continued listing of the Affiliate Security<sup>3</sup> on the Exchange, the Exchange shall:

- file a report quarterly (“Quarterly Report”) with the Commission detailing the Exchange’s monitoring of (a) the Nasdaq Affiliate’s compliance with the listing requirements; and (b) the trading of the Affiliate Security; and
- engage an independent accounting firm once a year to review and prepare a report on the Affiliate Security to ensure that the Nasdaq Affiliate is in compliance with the listing requirements (“Annual Report”) and promptly forward to the Commission a copy of the report prepared by the independent accounting firm.

In discussions with the Commission Staff regarding the Exchange’s Rule 990, it was determined that the Exchange no longer needs to provide to the Commission copies of the

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<sup>3</sup> Pursuant to Rule 990(a)(2), “Affiliate Security” means any security issued by a Nasdaq Affiliate, with the exception of Trust Shares as defined in Rule 803(i) and Index Fund Shares as defined in Rule 803(l), and pursuant to Rule 990(a)(1), “Nasdaq Affiliate” means Nasdaq, Inc. and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Nasdaq, Inc., where “control” means that the one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.

reports specified in paragraphs (b)(1) and (b)(2) thereunder; instead, the Exchange must provide these reports to the Exchange's Regulatory Oversight Committee. Accordingly, the Exchange proposes to amend Rule 990 to remove the requirement that the Quarterly Report be filed with the Commission and that copies of the Annual Report be forwarded to the Commission, and to require instead that copies of each such report be provided to PHLX's Regulatory Oversight Committee. In addition, the Exchange proposes to modify the definition of "Affiliate Security" in Rule 990(a)(2) to include any Exchange-listed option on any such security. Finally, the Exchange proposes to modify Rule 990(b) to require that the Exchange also follow Rule 990 upon initial and throughout continued trading, not just listing, of the "Affiliate Security" on the Exchange.

No other changes would be made to Rule 990, which would continue to require that PHLX file a report with the Commission if it determines that the Nasdaq Affiliate is not in compliance with the listing requirements.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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<sup>4</sup> 15 U.S.C. 78f(b).

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

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, because the proposed changes would reduce the paperwork received by the Commission and ease the burden of submitting the Quarterly and Annual Reports, while continuing to help protect against concerns that the Exchange will not effectively enforce its rules with respect to the listing and trading of Affiliate Securities. The proposed rule change would not change the information available to the Commission. The Exchange understands that these reports are subject to Section 17A of the Exchange Act<sup>6</sup> and that it will be required to keep and preserve, and to furnish to the Commission upon request, copies of these reports in accordance with Rule 17a-1 thereunder.<sup>7</sup>

The Exchange believes that the proposed change adding Exchange-listed options to the definition of “Affiliate Security” in Rule 990(a)(2) and requiring that the Exchange also follow Rule 990 upon initial and throughout continued trading, not just listing, of the “Affiliate Security” on the Exchange, will expand the scope of Rule 990, which would help eliminate any perception of a potential conflict of interest if a Nasdaq Affiliate seeks to list and/or trade an option on an Affiliate Security on the Exchange and thus promote just and equitable principles of trade, remove impediments to a free and open market and protect investors and the public interest by helping protect against concerns that the Exchange will not effectively enforce its rules with respect to the listing and trading of these securities.

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<sup>6</sup> 15 U.S.C. 78q.

<sup>7</sup> 17 CFR 240.17a-1.

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 proposed rule change is not intended to address competitive issues but rather to reduce the paperwork received by the Commission, ease the burden of submitting the Quarterly and Annual Reports, and provide greater clarity in the Exchange's rules, without changing the information available to the Commission.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> 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 as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup>

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 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.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)<sup>12</sup> of the Act to determine whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2018-23 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-Phlx-2018-23. 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

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<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

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-Phlx-2018-23 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.<sup>13</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).