



8011-01p

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84938; File No. SR-Phlx-2018-82]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend General 8

December 21, 2018

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 December 19, 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, 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 delete the Exchange’s existing rules on colocation, connectivity, and direct connectivity (the “Existing Connectivity Rules”), under General 8, and incorporate by reference into General 8 The Nasdaq Stock Market LLC’s (“Nasdaq’s”) rules on colocation, connectivity, and direct connectivity, which are located in General 8 of the Nasdaq rulebook shell structure.³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Recently, the six exchanges affiliated with Nasdaq, Inc. (The Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, Nasdaq ISE, LLC, Nasdaq GEMX, LLC, and Nasdaq MRX, LLC (collectively, the “Affiliated Exchanges”)) added shell structures to their respective rulebooks with the purpose of improving efficiency and readability and to align their respective rules.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqbx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 delete its Existing Connectivity Rules, currently under General 8, and incorporate by reference the corresponding Nasdaq rules, at General 8 of Nasdaq's rulebook. The Exchange proposes to remove the current rule text from General 8 and replace it with the following text:

General 8 Connectivity

The rules contained in The Nasdaq Stock Market LLC General 8, as such rules may be in effect from time to time (the "General 8 Rules"), are hereby incorporated by reference into this Nasdaq PHLX General 8, and are thus Nasdaq PHLX Rules and thereby applicable to Nasdaq PHLX Members. Nasdaq PHLX Members shall comply with the General 8 Rules as though such rules were fully set forth herein. All defined terms, including any variations thereof, contained in the General 8 Rules shall be read to refer to

the Nasdaq PHLX related meaning of such term. Solely by way of example, and not in limitation or in exhaustion: the defined term "Exchange" in the General 8 Rules shall be read to refer to the Nasdaq PHLX Exchange; the defined term "Rule" in the General 8 Rules shall be read to refer to the Nasdaq PHLX Rule.⁴

Over the past year, the Affiliated Exchanges each took steps to harmonize their respective rules on colocation, connectivity, and direct connectivity, first by relocating them to General 8 of their respective rulebooks, and then by eliminating substantive differences among the rules. The Affiliated Exchanges harmonized these rules because the Affiliated Exchanges offer colocation, connectivity, and direct connectivity services and related products to their customers on a shared basis with one another,⁵ and to do so, the rules and fees governing such shared products and services should be the same for all of the Affiliated Exchanges.

Because the text of the Exchange's General 8 is already substantively identical⁶ to Nasdaq's General 8, the proposal will not effect any substantive changes to the Exchange's General 8. Instead, the proposal will merely adopt language indicating that the Exchange is

⁴ The Exchange shall include a hyperlink to Nasdaq's General 8 for ease of reference.

⁵ The offering of products and services on a shared basis means that a customer purchases colocation, connectivity, and direct connectivity products and services once to gain access to any or all of the Affiliated Exchanges to which the customer is otherwise entitled to receive access under the respective rules of the Affiliated Exchanges. In other words, the Affiliated Exchanges only charge customers once for these shared products and services, even to the extent that a customer uses the products and services to connect to more than one of the Affiliated Exchanges. Likewise, the rules provide for connectivity to third-party services and market data feeds on a shared basis, meaning that a firm need only purchase a subscription to these services once, regardless of whether the firm is a member or member organization, as applicable, of multiple Affiliated Exchanges.

⁶ A small number of minor differences exist among the Section 8s of the Affiliated Exchanges. However, these differences, such as the use of the word "the" before the phrase "Nasdaq Data Center" in one version of the Rulebook and not in the others, are technical and do result in substantive variations in the meanings of the Rulebooks.

incorporating by reference Nasdaq's General 8 and it will make conforming cross-reference changes.

This proposal is the penultimate step in the harmonization process. The Exchange plans to file with the Commission a request to exempt it from Section 19(b) of the Act with respect to General 8, as amended herein, so that the Exchange will not need to file a proposed rule change whenever Nasdaq amends its General 8 rules. The Exchange proposes that this rule change become operative at such time as it receives approval for this exemption from the Commission, pursuant to its authority under Section 36 of the Act⁷ and Rule 0-12 thereunder.⁸

The Exchange's General 8 and Nasdaq's General 8 are regulatory in nature.⁹ Should any rules which impact trading behavior be added to Nasdaq General 8 in the future, those rules shall not become subject to the incorporation by reference and shall be placed elsewhere within the Exchange's Rulebook. The Exchange notes that as a condition of any exemption approved by the Commission, the Exchange agrees to provide written notice to its members whenever Nasdaq proposes a change to its General 8 Rules.¹⁰ Such notice will alert Exchange members to the proposed Nasdaq rule change and give them an opportunity to comment on the proposal. The

⁷ 15 U.S.C. 78mm.

⁸ See 17 CFR 240.0-12; Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998).

⁹ The General 8 Rules are categories of rules that are not trading rules. See 17 CFR 200.30-3(a)(76) (contemplating such requests). In addition, several other 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. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008), 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006); 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004).

¹⁰ The Exchange will provide such notice via a posting on the same website location where it posts its own rule filings pursuant to Rule 19b-4 within the timeframe require by such Rule. The website posting will include a link to the location on the Nasdaq website where the applicable proposed rule change is posted.

Exchange will similarly inform its members in writing when the Commission approves any such proposed change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to promote just and equitable principles of trade, 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.

The Exchange believes that harmonizing the Existing Connectivity Rules with the colocation, connectivity, and direct connectivity rules of Nasdaq will improve efficiency and reduce the burden on firms as they only will need to be familiar with a single set of rules going forward governing colocation, connectivity, and direct connectivity. Because the text of the Existing Connectivity Rules and Nasdaq General 8 are already the same, the proposed change will have no substantive impact on firms that colocate with or connect to the Exchange.

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 does not make any substantive change to Exchange General 8 and will not impact competition.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

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 as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴

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:

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 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.

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-Phlx-2018-82 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-2018-82. 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-Phlx-2018-82 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Brent J. Fields,
Secretary.

¹⁵ 17 CFR 200.30-3(a)(12).

