

filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2019-007, and should be submitted on or before April 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019-06925 Filed 4-8-19; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-147, OMB Control No. 3235-0131]

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

#### *Extension:*

Rule 17a-7

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (“PRA”), the Securities and Exchange Commission (“Commission”) is soliciting comments on the existing collection of information provided for in Rule 17a-7 (17 CFR 240.17a-7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (“Exchange Act”). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rule 17a-7 requires a non-resident broker-dealer (generally, a broker-dealer with its principal place of business in a place not subject to the jurisdiction of the United States) registered or applying for registration pursuant to Section 15 of the Exchange Act to maintain—in the United States—complete and current copies of books and records required to be maintained under any rule adopted under the Exchange Act and furnish to the Commission a written notice specifying the address where the copies are located. Alternatively, Rule 17a-7 provides that non-resident broker-

dealers may file with the Commission a written undertaking to furnish the requisite books and records to the Commission upon demand within 14 days of the demand.

There are approximately 31 non-resident brokers and dealers. Based on the Commission’s experience, the Commission estimates that the average amount of time necessary to comply with Rule 17a-7 is one hour per year. Accordingly, the total industry-wide reporting burden is approximately 31 hours per year. Assuming an average cost per hour of approximately \$314 for a compliance manager, the total internal cost of compliance for the respondents is approximately \$9,734 per year.<sup>1</sup>

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the Commission’s estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: April 4, 2019.

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019-06959 Filed 4-8-19; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>1</sup> \$314 per hour for a compliance manager is from SIFMA’s *Management & Professional Earnings in the Securities Industry 2013*, modified by Commission staff for an 1800-hour work-year, multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, and adjusted for inflation.

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85494; File No. SR-NYSEArca-2019-18]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 6.40-O To Reduce the Minimum Allowable Parameter for the Percentage-Based Risk Limitation Mechanism

April 3, 2019.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 22, 2019, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 6.40-O (Risk Limitation Mechanism) to reduce the minimum allowable parameter for the percentage-based Risk Limitation Mechanism. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.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 self-regulatory organization 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 those 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 parts of such statements.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>26</sup> 17 CFR 200.30-3(a)(12).

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

1. Purpose

The Exchange proposes to amend Rule 6.40–O (Risk Limitation Mechanism) to reduce the minimum allowable parameter for the percentage-based Risk Limitation Mechanism.

Risk Limitation Mechanisms

Rule 6.40–O sets forth the risk-limitation system, which is designed to help Market Makers, as well as OTP Holder and OTP Firms (collectively, “OTPs”), better manage risk related to quoting and submitting orders, respectively, during periods of increased and significant trading activity.<sup>4</sup> The Exchange requires Market Makers to utilize a risk limitation mechanism for quotes, which automatically removes a Market Maker's quotes in all series of an options class when certain parameter settings are breached.<sup>5</sup> The Exchange permits, but does not require, OTPs to utilize its risk limitation mechanism for orders, which automatically cancels such orders when certain parameter settings are breached.<sup>6</sup>

Pursuant to Rule 6.40–O, the Exchange establishes a time period during which the System calculates for quotes and orders, respectively: (1) The number of trades executed by the Market Maker or OTP in a particular options class (“transaction-based”); (2) the volume of contracts traded by the Market Maker or OTP in a particular options class (“volume-based”); or (3)

the aggregate percentage of the Market Maker's quoted size or OTP's order size(s) executed in a particular options class (“percentage-based”) (collectively, the “risk settings”).<sup>7</sup> If a risk setting is triggered the System will cancel all of the Market Maker's quotes or the OTP's open orders in that class until the Market Maker or OTP notifies the Exchange it will resume submitting quotes or orders.<sup>8</sup> The temporary suspension of quotes or orders from the market that results when the risk settings are triggered is meant to operate as a safety valve that enables Market Makers and/or OTPs to re-evaluate their positions before requesting to re-enter the market.

Proposed Change to Minimum Parameter for Percentage-Based Risk Setting

Per Commentary .03 to Rule 6.40–O, the Exchange establishes outside allowable parameters for each risk setting and announces by Trader Update “any applicable minimum, maximum and/or default settings for the Risk Limitation Mechanisms” that are at or within these outside parameters. OTPs, in turn, adjust their own risk settings within the Exchange-established parameters, based on risk tolerance, taking into account such factors as present and anticipated market conditions, news in an option, and/or sudden change in volatility of an option. Put another way, the rule sets forth the minimum/maximum for each risk setting and the Exchange may, but does not have to, use these settings. However, the Exchange may instead choose settings that are higher than the minimum and lower than the maximum settings (*i.e.*, if the rule allows a minimum of 1 and a maximum of 10, the Exchange could use these parameters or could instead establish a minimum of 3 and a maximum of 7). Once the Exchange determines and announces the applicable parameters for each risk setting, the ATP Holder, in turn, selects a setting within the Exchange announced parameters that suits their risk tolerance (*i.e.*, assuming the Exchange selected a minimum of 3 and a maximum of 7, the ATP Holder may select a setting of 3, 4, 5, 6 or 7).

<sup>7</sup> See Rule 6.40–O (b)–(d) (setting forth the three risk limitation mechanisms available). A Market Maker may activate one Risk Limitation Mechanism for its quotes (which is required) and a different Risk Limitation Mechanism for its orders (which is optional), even if both are activated for the same class. See also Commentary .08 to Rule 6.40–O.

<sup>8</sup> See Commentaries .01 and .02 to Rule 6.40–O (requiring that a Market Maker or OTP Holder request that it be re-enabled after a breach of its risk settings).

The Exchange proposes to adjust the minimum allowable parameter as established by Rule for the percentage-based risk setting from 100 percent to 1 percent (the “Minimum Parameter”).<sup>9</sup> The following illustrates the potential impact of the Exchange setting the reducing the minimum threshold from 100 percent to 1 percent:

If a market participant has interest in two series of the same underlying, A and B, for 10 contracts each, the participant uses the percentage-based risk setting, and the exposure risk is set to 100 percent, an execution in series A for 10 contracts will result in the interest in series B being canceled. However, if the execution in series A is for 9 contracts (as opposed to 10), the interest in series B would not be cancelled. If there is a subsequent execution within the time period<sup>10</sup> in series B for any number of contracts or for the remaining contract in series A, the remaining interest in series A and B will be canceled.

If the same facts as above, but instead, the participant's exposure risk is set to 1 percent (as opposed to 100 percent), an execution in series A for any number of contracts, will result in the remaining interest in series A and B being canceled.

As indicated above, the proposed reduction of the Minimum Parameter was specifically requested by some OTPs and would inure to their benefit as it would allow the Exchange to offer more sensitive risk controls. The Exchange notes that it is not modifying the maximum threshold for the percentage-based setting, which provides OTPs, and Market Makers in particular, the ability to more finely calibrate their risk exposure. The Exchange has not modified this Minimum Parameter since implementing the risk settings in 2012.<sup>11</sup> The Exchange believes a modification to the Minimum Parameter would account for increased market volatility and fragmentation, as well as

<sup>9</sup> See proposed Commentary .03 to Rule 6.40–O. The manner in which Rule 6.40–O operates is not being amended in this rule change.

<sup>10</sup> See Commentary .03 to Rule 6.40 (providing that the Exchange will specify via Trader Update “any applicable time period(s) for the Risk Limitation Mechanisms; provided, however, that the Exchange will not specify a time period of less than 100 milliseconds”).

<sup>11</sup> See Securities Exchange Act Release No. 67714 (August 22, 2012), 77 FR 52104 [sic] (August 28, 2012) (NYSEArca–2012–87). In 2016, the Exchange modified only the upper bound of the percentage-based (as well as the upper bound of the volume-based) risk setting. At that time, the Exchange also modified both the upper and lower bound of the transaction-based setting. See Securities Exchange Act Release No. 79469 (December 5, 2016), 81 FR 89171 (December 9, 2016) (NYSEArca–2016–155).

<sup>4</sup> Market Makers are included in the definition of OTPs and therefore, unless the Exchange is discussing the quoting activity of Market Makers, the Exchange does not distinguish Market Makers from OTPs when discussing the risk limitation mechanisms. See Rule 1.1(nn) (defining OTP Holder as “a natural person, in good standing, who has been issued an OTP, or has been named as a Nominee” that is “a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934, or a nominee or an associated person of a registered broker or dealer that has been approved by the Exchange to conduct business on the Exchange's Trading Facilities”). See also Rule 6.32–O(a) (defining a Market Maker as an individual “registered with the Exchange for the purpose of making transactions as a dealer-specialist on the Floor of the Exchange or for the purpose of submitting quotes electronically and making transactions as a dealer-specialist through the NYSE Arca OX electronic trading system”).

<sup>5</sup> See Rule 6.40–O, Commentary .04(a) (providing that Market Makers are required to utilize one of the three risk settings for their quotes); and Commentary .01 (regarding the cancellation of quotes once the risk settings have been breached).

<sup>6</sup> See Rule 6.40–O, Commentary .04(b) (providing that OTPs may avail themselves of one of the three risk limitation mechanisms for certain of their orders) and Commentary .01 (regarding the cancellation of orders once the risk settings have been breached).

the ever-increasing automation, speed and volume transacted in today's electronic trading environment. In this regard, this proposed change would provide the Exchange with more flexibility within which to establish the lower bound risk parameter for OTPs that use this risk setting. To the extent this flexibility is utilized, the Exchange believes this should afford such OTPs the ability to better calibrate and manage risk.<sup>12</sup>

#### Implementation

The Exchange will announce by Trader Update the implementation date of the proposed rule change.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>14</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.

OTPs are vulnerable to the risk from a system or other error or a market event that may cause them to send a large number of orders or receive multiple, automatic executions before they can adjust their exposure in the market. Without adequate risk management tools, such as the available risk settings, OTPs may opt to reduce the amount of order flow and liquidity that they provide to the market, which could undermine the quality of the markets available to market participants. The Exchange believes that the proposed Minimum Parameter, which setting has not been modified since it was adopted in 2012, removes impediments to and perfects the mechanism of a free and open market by providing the Exchange with more flexibility within which to establish the appropriate lower bound of the percentage-based setting, in consideration of market conditions, which would enable this risk setting to

operate in the manner intended to the benefit of all market participants. To the extent this flexibility is utilized, the Exchange believes this should afford OTPs that utilize this risk setting the ability to better calibrate and manage risk.

Further, this proposed change, which was specifically requested by some OTPs, would remove impediments to and perfect the mechanism of a free and open market because it would be available to all OTPs (if the Exchange chooses to reduce the Minimum Parameter to one percent) and may encourage more OTPs to utilize the percentage-based risk setting, specifically, or the risk settings generally, which would benefit of all market participants. The Exchange believes this proposal has the potential to help OTPs better manage their risk as it would allow for more precise customization of their risk settings which would, in turn, help OTPs avoid trading a number of contracts that exceeds the OTP's risk tolerance level.

The Exchange notes that other options exchanges offer risk settings for quotes and orders, including analogous percentage-based settings, consistent with the proposed Minimum Parameter. For example, Rule 21.16, Risk Monitor Mechanism, one [sic] both Cboe BZX Exchange, Inc. ("BZX") and Cboe EDGX Exchange, Inc. ("EDGX") states that each BZX or EDGX Member may (but is not required to) configure a single counting program or multiple counting programs to govern its trading activity (*i.e.*, on a per port basis).<sup>15</sup> Just as with Exchange's [sic] percentage-based risk setting, BZX/EDGX offer a risk setting that is based on a percentage-based trigger, measured against the number of contracts executed as a percentage of the number of contracts outstanding within a time period designated by the Exchange ("percentage trigger").<sup>16</sup> This percentage trigger is calculated similarly to the risk setting on the Exchange: The BZX/EDGX counting program first calculates, for each series of an option class, the percentage of a BZX/EDGX Member's order size in the specified class or a the [sic] percentage of BZX/EDGX Member that is a market maker's quote size in the appointed class that is executed on each side of the market,

including both displayed and non-displayed size; the counting program then sums the overall series percentages for the entire option class to calculate the percentage trigger. Unlike the Exchange's rule, BZX/EDGX Rule 21.16 has no minimum equivalent, which the Exchange understands means that the risk setting established by the Member for its trading activity (whether orders or market maker quotes) may be set as low as 1 percent. And unlike the Exchange, BZX/EDGX do not require its market makers to establish risk settings for quotes, nor does it impose a default setting for participants that do not establish such risk settings. As proposed, the Minimum Parameter would authorize the Exchange to allow the percentage-based trigger to be as low as 1 percent, which would thus allow the Exchange's rule to operate more similarly to the BZX/EDGX rule.<sup>17</sup> The Exchange believes that this proposal is consistent with the BZX/EDGX rules that allow order senders (*i.e.*, including non-Market Makers) to use a percentage-based risk parameter that may be set as low as 1 percent.

The Exchange also notes that two non-Cboe affiliated options exchanges likewise offer similar percentage-based risk settings that apply solely to quotes. Specifically, Miami International Exchange LLC ("MIAX") Rule 612(a) requires its market makers to establish a risk settings [sic] for quotes in its appointment (as does the Exchange). MIAX's percentage-based risk setting operates similar to the Exchange's analogous setting. However, MIAX does not provide a minimum Allowable Engagement Percentage ("AEP"); market makers are free to pick any AEP (effectively allowing them to set a threshold as low as 1 percent). If a MIAX market maker does not establish an AEP, MIAX will impose a default minimum of 100 percent. In addition, Nasdaq PHLX ("PHLX")—like the Exchange and MIAX—also requires its market makers to utilize one of its risk settings (either volume-based or percentage-based) for quotes. PHLX's percentage-based risk setting operates similar to the Exchange's analogous setting. Further, PHLX Rule 1099(c)(2)(A) provides that market

<sup>12</sup> The Exchange would still announce by Trader Update the actual minimum setting for the percentage-based risk setting, which may be the same as or greater than the Minimum Parameter (but no greater than the maximum allowable percentage-based setting). See Commentary .03 to Rule 6.40-O.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> See BZX and EDGX Rule 21.16(a)(i)–(iv) (providing optional risk settings). On each market (BZX and EDGX), risk setting limits have been reached [sic], the Risk Monitor Mechanism cancels or rejects such Member's orders or quotes in all underlying securities and cancels or rejects any additional orders or quotes. See BZX and EDGX Rule 21.16(b)(i)–(iii).

<sup>16</sup> See BZX and EDGX Rule 21.16(a)(iv) (setting forth percent trigger risk setting).

<sup>17</sup> The Exchange notes that other options in [sic] exchanges in the Cboe family offer a similar Risk Monitor Mechanism. See, e.g., Cboe C2 Exchange, Inc. ("C2") Rule 6.14(c)(5)(A)(i)–(v) (setting forth risk settings, with paragraph (iv) setting forth the percentage-based setting, each of which mirror those offered by BZX and EDGX). See also Securities Exchange Act Release No. 84778 (December 10, 2018) (SR-CboeEDGX-2018-058) (immediately effective EDGX filing to harmonize risk mechanism to that of its affiliated exchange, C2).

makers that opt to utilize PHLX's percentage-based risk setting may establish a minimum threshold (*i.e.*, a "Specified Percentage") of no lower than 1 percent.<sup>18</sup> The Exchange believes that this proposal is consistent with the MIAX and PHLX rules that require market makers on those exchanges to use a percentage-based risk parameter that may be set as low as 1 percent (and, in the case of MIAX, a default setting will be imposed if the market maker fails to select one).

Finally, the Exchange also believes that the proposed rule change would promote just and equitable principles of trade because Market Makers have the option to select one of three risk settings for quotes and non-Market Makers have this same option or may choose to utilize no risk settings at all. Thus, this proposal merely provides the Exchange additional latitude in establishing the percentage-based risk setting and may encourage more OTPs to utilize this or the other two risk settings, which benefits all market participants.

#### *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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is proposing a Minimum Parameter that would provide the Exchange will greater flexibility in establishing the appropriate lower bound of the percentage-based setting, which may in turn provide OTPs that utilize this setting with greater control and flexibility over setting their risk tolerance and, potentially, more protection over risk exposure. The proposal is structured to offer the same enhancement to all OTPs, regardless of size, and would not impose a competitive burden on any participant. The proposal may foster competition among Market Makers by providing them with the ability to enhance and customize their percentage in order to compete for executions and order flow.

The Exchange does not believe that the proposed enhancement to the

existing risk limitation mechanism would impose a burden on competing options exchanges. Rather, it provides OTPs with the opportunity to avail themselves of risk settings for quotes and orders that are consistent with such tools currently available on BZX, EDGX, MIAX and PHLX.<sup>19</sup>

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

#### **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) of the Act<sup>20</sup> and Rule 19b-4(f)(6) thereunder.<sup>21</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>22</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>23</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. As noted above, the proposed operational functionality is substantially similar to those utilized on other options exchanges,<sup>24</sup> and the differences noted herein do not raise substantive or novel issues. Waiver of the operative delay would allow the Exchange to immediately implement the proposed functionality in coordination with the availability of the technology supporting the proposal, permitting OTPs to utilize the optional risk settings without undue delay. Thus the

Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>25</sup>

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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2019-18 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-NYSEArca-2019-18. This file number should be included on the subject line if email 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 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

<sup>25</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>18</sup> The Exchange notes that MIAX cited to the BZX rule when it filed an immediately effective proposed rule change to change its AEP setting from 100 percent to any percentage established by the market maker (*i.e.*, no minimum parameter). See Securities Exchange Act Release No. 77817 (May 12, 2016), 81 FR 31286 (May 18, 2016) (SR-MIAX-2016-10). See also [sic] See Securities Exchange Act Release No. 78129 (June 22, 2016), 81 FR 42024 (June 28, 2016)) (SR-Phlx-2016-67) (immediately effective rule filing, citing MIAX AEP, to modify its analogous percentage-based risk setting to establish the minimum Specified Percentage determined by a market maker at not less than 1 percent).

<sup>19</sup> See *supra* notes 15-18.

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

<sup>22</sup> 17 CFR 240.19b-4(f)(6).

<sup>23</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>24</sup> See *supra* notes 14-17.

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-NYSEArca-2019-18 and should be submitted on or before April 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Eduardo A. Aleman,**  
Deputy Secretary.

[FR Doc. 2019-06928 Filed 4-8-19; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85505; File No. SR-NASDAQ-2019-007]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Reassign Certain Investigation and Enforcement Functions Under the Exchange's Authority and Supervision

April 3, 2019.

#### I. Introduction

On February 5, 2019, The Nasdaq Stock Market LLC ("Exchange" or "Nasdaq") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to assume operational responsibility for certain investigation and enforcement functions currently performed by the Financial Industry Regulatory Authority ("FINRA") under the Exchange's authority and supervision. The proposed rule change was published for comment in the **Federal Register** on

February 22, 2019.<sup>3</sup> On February 28, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change as originally filed. On March 28, 2019, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and replaced the proposed rule change, as modified by Amendment No. 1.<sup>4</sup> The Commission did not receive any comment letters on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

#### II. Description of the Proposal

Since it became a national securities exchange, the Exchange has contracted with FINRA through various regulatory services agreements to perform certain regulatory functions on its behalf.<sup>5</sup> At the same time, the Exchange has retained operational responsibility for a number of regulatory functions, including real-time surveillance, qualification of companies listed on the Exchange, and most surveillance related to its affiliated options markets.<sup>6</sup>

The Exchange now proposes to reallocate operational responsibility from FINRA to Nasdaq Regulation for certain investigation and enforcement activities, specifically: (1) Investigation and enforcement responsibilities for conduct occurring on the Nasdaq Options Market,<sup>7</sup> and (2) investigation and enforcement responsibilities for conduct occurring on Nasdaq's equity market only (*i.e.*, not also on non-

<sup>3</sup> See Securities Exchange Act Release No. 85153 (February 15, 2019), 84 FR 5752.

<sup>4</sup> In Amendment No. 2, the Exchange: (1) Revised the timing for the phased transition; (2) stated that Nasdaq Regulation will coordinate with other self-regulatory organizations to the extent it is investigating activity occurring on non-Nasdaq options markets; (3) specified that Nasdaq BX, Inc. ("BX") will file a similar proposed rule change to request Commission approval for Nasdaq Regulation to perform the same functions on behalf of BX; (4) provided an example of contested disciplinary proceedings that will continue to be handled by FINRA; (5) represented that the investigatory and disciplinary processes and related rules applicable to its members that FINRA currently follows on the Exchange's behalf will remain the same; and (6) made other technical, clarifying, and conforming changes. Amendment No. 2 is available at <https://www.sec.gov/comments/sr-nasdaq-2019-007/srnasdaq2019007-5252816-183726.pdf>.

<sup>5</sup> See Amendment No. 2, *supra* note 4 at 4.

<sup>6</sup> See *id.*

<sup>7</sup> The Exchange states that, as appropriate, Nasdaq Regulation will coordinate with other self-regulatory organizations to the extent it is investigating activity occurring on non-Nasdaq options markets to ensure no regulatory duplication occurs. See *id.* at 5 n.7.

Nasdaq equities markets).<sup>8</sup> The Exchange states that it anticipates a phased transition whereby it would assume increasing investigation and enforcement responsibility throughout 2019 and into 2020.<sup>9</sup> The Exchange also anticipates transitioning certain matters currently pending with FINRA to the Nasdaq Enforcement Department if Nasdaq Regulation believes doing so is consistent with ensuring prompt resolution of regulatory matters.<sup>10</sup>

The Exchange states that FINRA will continue to perform certain functions, including, among other things: (1) The investigation and enforcement of conduct occurring on the Nasdaq equity market that also relates to cross market activity on non-Nasdaq exchanges; (2) the handling of contested disciplinary proceedings arising out of Nasdaq Regulation-led investigation and enforcement activities;<sup>11</sup> and (3) matters covered by agreements to allocate regulatory responsibility under Rule 17d-2 of the Act.<sup>12</sup>

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>13</sup> and, in particular,

<sup>8</sup> See *id.* at 5. The Exchange believes its expertise in its own market structure, coupled with its expertise in surveillance activities, would enable it to conduct investigation and enforcement responsibilities for the Exchange effectively, efficiently, and with immediacy. See *id.* at 6. The Exchange also states that Commission approval of the proposal would allow it to better leverage its surveillance, investigation, and enforcement teams, to deliver increased efficiencies in the regulation of its market, and to act promptly and provide more effective regulation. See *id.* at 9.

<sup>9</sup> See *id.* at 8.

<sup>10</sup> See *id.*

<sup>11</sup> The Exchange states that, for example, pursuant to Rule 9216, if at the conclusion of a Nasdaq Regulation-led investigation, Nasdaq Regulation has reason to believe that a violation occurred but the Respondent disputes the violation and therefore does not execute an Acceptance, Waiver, and Consent ("AWC") letter, or if the Respondent executes the AWC letter but the Nasdaq Review Council, Review Subcommittee, or FINRA's Office of Disciplinary Affairs does not accept the executed letter, the Exchange may decide to pursue formal disciplinary proceedings. In such a case, the Exchange would refer the matter to FINRA to handle the formal disciplinary proceedings on its behalf. FINRA's Office of Hearing Officers will continue to be responsible for the administration of the hearing process. See *id.* at 7 n.12.

<sup>12</sup> See *id.* at 7. The Exchange represents that, as with all investigation and enforcement work, all tasks delegated to FINRA are subject to Nasdaq's supervision and ultimate responsibility. See *id.*

<sup>13</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>26</sup> 17 CFR 200.30-3(a)(12).

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

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