because it will promote transparency to the Exchange’s current practices by conforming the By-Law language to the ROC Charter. As discussed above, the composition requirements that all ROC members be Public Directors and “independent directors” as defined in Nasdaq’s Rules will remain unchanged with this proposal, thereby ensuring that an independent Board committee will continue to be responsible for the regulatory oversight of the Exchange.

Lastly, the proposed technical changes in Section 5(c) to correct a typographical error and to update the reference to Nasdaq Rule 4200 to Rule 5605 will bring greater clarity to the Exchange’s rules, which will protect investors and the public interest.

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

Because the proposed rule change relates to the corporate governance of the Exchange and not to the Exchange’s operations, 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.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change

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) of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.21

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) 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. The Commission notes that waiver of the operative delay would allow the Exchange to effect the changes to its LLC Agreement and By-Laws, which would provide more specificity and would better align provisions in the Exchange’s LLC Agreement with those in the LLC Agreements of its affiliates, in time for the Exchange Board meeting on September 25, 2019. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.22

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. Please include File Number SR–NASDAQ–2019–081 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 be submitted on or before October 3, 2019. 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 September 23, 2019, Nasdaq MRX, LLC (“MRX” or “Exchange”) filed with the

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX’s Rulebook and By-Laws

October 3, 2019.

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 September 23, 2019, Nasdaq MRX, LLC (“MRX” 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 its Rulebook and By-Laws to (i) remove obsolete provisions relating to the organization and administration of committees, (ii) modify Director categorizations, (iii) amend the compositional requirements of the Exchange’s board (“Board”) and Regulatory Oversight Committee (“ROC”), and (iv) make additional, non-substantive edits.

The text of the proposed rule change is available on the Exchange’s website at http://nasdaqmrx.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 amend its Rulebook and By-Laws to (i) remove obsolete provisions relating to the organization and administration of committees, (ii) modify Director categorizations, (iii) amend the Board and ROC compositional requirements, and (iv) make additional, non-substantive edits. Each change is discussed below.3

Rules 200–203

Chapter 2 of the Exchange’s Rulebook presently contains a number of rules relating to the organization and administration of committees of the Exchange. In particular, Rules 200–203 set forth provisions for the establishment of committees, removal of committee members, committee procedures and the general duties and powers of committees, all of which have been in place since the Exchange’s inception. The Exchange has since amended its committee structure and related rules to align with those of its affiliates.4 Accordingly, the Exchange proposes to delete Rules 200–203 as obsolete or duplicative because the provisions related to the organization and administration of committees are now set forth in the Exchange’s Limited Liability Company Agreement (“LLC Agreement”) and its By-Laws. Historically, Rules 200 and 201 authorized the Chief Executive Officer and President of the Exchange to establish committees not comprised of directors pursuant to delegated authority by the Board, and to appoint or remove any such committee members with Board approval.5 With the changes in SR–MRX–2017–18 and SR–MRX–2018–23, these rules have been superseded by By-Law provisions that specify the committees composed solely of Directors and committees not composed solely of Directors, including the appointment and removal of such committee members.6 In this respect, the Exchange notes that it is following the approach of its affiliates, BX, Nasdaq, and Phlx, which similarly have provisions in their respective By-Laws, pertaining to committees composed solely of Directors and committees not composed solely of Directors, who (i) is or has served in the capacity of an officer, director, or employee of an issuer of securities listed on the national securities exchange operated by the Exchange,7 or (ii) an officer, director or employee of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates. The Exchange believes that the proposed changes will bring greater clarity to the Exchange’s rules by aligning the By-Law provision to how the Exchange currently operates. The Exchange notes that the qualifications for a Non-Industry Director are not expanding under this proposal and as a practical matter, no changes to the current composition of Non-Industry Directors on the Exchange’s Board are contemplated by this rule change.

Today, a Non-Industry Director who is not designated by the Exchange as a Public Director8 under (i) of the definition of Non-Industry Director, and that does not explicitly fall under (ii) (i.e., “an officer, director or employee of an issuer of securities listed on the national securities exchange operated by the Exchange”)) would still fall under (iii) an individual who would not be an Industry Director.10 With the proposed

---

3 All references herein and in the Exhibit 5 to “the Company” mean the Exchange. Company is defined in the By-Laws to mean Nasdaq MRX, LLC.


5 For example, the Exchange’s former Business Conduct Committee (“BCC”) was established by the Chief Executive Officer and President pursuant to delegated authority. As noted above, the BCC was recently replaced by the Exchange Review Council in SR–MRX–2018–23. See Securities Exchange Act Release No. 83705 (July 25, 2018), 83 FR 37020 (July 31, 2018) (SR–MRX–2018–23).

6 See By-Law Article III, Sections 4–6. In addition, the provisions governing the Exchange Review Council are specified in By-Law, Article VI.

7 See BX By-Law Article IV, Sections 4.12–4.14 and Article VII; Nasdaq By-Law Article III, Sections 4–6 and Article VI, and Phlx By-Law Article V.

8 In addition, the term “Non-Industry Director” encompasses a Director (excluding Staff Directors) who is a Public Director or any other individual who would not be an Industry Director. See By-Law Article I, Section (w).

9 The term “Public Director” means a Director who has no material business relationship with a broker or dealer, the Company or its affiliates, or FINRA. See By-Law Article I, Section (a).

10 The term “Industry Director” means a Director (excluding any two officers of the Company, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the “Staff Directors”)), (i) who is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the
changes, these Non-Industry Directors could fall under both (ii) and (iii) because they would be representative of issuers listed on the Exchange’s affiliate, Nasdaq, and at the same time, not be considered Industry Directors. The Exchange also proposes to make conforming changes to the definition of a “Non-Industry member” of a committee.\(^1\)

Currently, the Exchange’s Board compositional requirements require at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives).\(^1\) As set forth in Article I, Section (z), a “Public Director” is defined as a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. “Issuer representative” is not defined specifically in the Exchange’s By-Laws, but is implicitly defined in the term Non-Industry Director as “an officer, director, or employee or an issuer of securities listed on the national securities exchange operated by the Exchange.”\(^1\) The Exchange now proposes to clarify in the definition of Public Director that, for the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates shall not be precluded from being considered a Public Director solely on the basis of such directorship. The Exchange believes that a director of a listed company can adequately represent the interests of listed companies on the Board and therefore be considered an issuer representative. At the same time, the Exchange does not believe that such a directorship always constitutes a material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA, which would prohibit the individual from being considered a Public Director.\(^1\) Of course, such issuer representative must still meet the requirements of a Public Director and not have such material business relationships by definition. Thus in limited circumstances, the Exchange believes that it is possible for directors of listed companies to be considered both Public Directors and issuer representatives. In light of the foregoing, the Exchange also proposes to make conforming changes to the definition of a “Public member” of a committee.\(^1\)

The Exchange notes that with the proposed changes, the composition of the Board would still be required to reflect a balance among Non-Industry Directors (including Public Directors and issuer representatives), Industry Directors, and Member Representative Directors.\(^1\) Accordingly, current Board qualification requirements such as the number of Non-Industry Directors equaling or exceeding the sum of the number of Industry Directors and Member Representative Directors would continue to apply.\(^1\)

---

\(^{1}\) This is consistent with the longstanding best practice of the Exchange’s ultimate parent, Nasdaq, Inc., having the Chairman of the Audit Committee of the board of directors of Nasdaq, Inc. serve as the Chairman of the Exchange’s Board’s Regulatory Oversight Committee, which is required to be comprised of Public Directors who are also considered “independent directors” as defined in Nasdaq Rule 5605. See By-Law Article III, Section 5(c). Because Nasdaq, Inc. is a listed company, this Exchange Director could be considered both an issuer representative and a Public Director.

\(^{1}\) See By-Law Article I, Section (x).

\(^{1}\) See By-Law Article III, Section 2(a).

\(^{1}\) See By-Law Article I, Section (w). As discussed above, the Exchange will amend this provision to refer to “an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates.”

\(^{1}\) See By-Law Article I, Section (m).

\(^{1}\) By-Law Article III, Section 2(a) also requires that the number of Non-Industry Directors (which includes Public Directors and issuer representatives) shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors. Furthermore, Section 9(a) of the LLC Agreement requires that at least 20% of the Directors be Member Representative Directors. These Board qualifications are not being amended.
proposes to make technical changes in Section 5(c) to update Nasdaq’s name.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act, in general, and further the objectives of Section 6(b)(1), Section 6(b)(3), and Section 6(b)(5) of the Act, in particular, which require, among other things, an exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act; that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; and that the rules of an exchange be 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.

Rules 200–203

As discussed above, the Exchange proposes to delete Rules 200–203 as obsolete or duplicative because the provisions related to the organization and administration of committees are now set forth in the Exchange’s LLC Agreement and By-Laws. The Exchange believes that deleting rules that no longer apply to the Exchange’s current committee structure will more clearly identify currently applicable rules, which will remove impediments to and perfect the mechanism of a free and open market. The Exchange further believes that the proposed rule change will eliminate potential confusion regarding which rules apply to the organization and administration of committees, which ultimately protects investors and the public interest.

By-Law Article I

The Exchange believes that the changes to the definitions of Non-Industry Director and Non-Industry member proposed above will enhance the clarity of these provisions given that only the Exchange’s affiliate (Nasdaq) currently operates an equities listing system, and, in general to protect investors and the public interest.

By-Law Article III, Section 2(a)

The Exchange believes that its proposal to expand the Board qualifications from an issuer representative to a representative of issuers and investors, and eliminate the requirement that the Board have two such representatives if the Board consists of ten or more Directors is consistent with the Act. The Exchange notes that the proposed changes track the statutory language included in Section 6(b)(3) of the Act, which requires one or more directors to be “representative of issuers and investors.” The Exchange also notes that the elimination of the requirement to have at least two Director positions representative of issuers if the Board consists of ten or more Directors is consistent with Section 6(b)(3) of the Act, which only requires the Board to have one such representative. Furthermore, the Exchange will continue to require the Board composition to reflect a balance among Non-Industry Directors (including Public Directors and Director representatives of issuers and investors), Industry Directors, and Member Representative Directors (with the latter continuing to constitute 20% of the Board). Accordingly, the Exchange believes that the changes to the Board qualifications proposed herein will more accurately reflect current Exchange operations while continuing to meet the statutory requirements under Section 6(b)(3) of the Act. In addition, the proposed amendments will have the additional benefit of bringing the Exchange’s Board qualifications on this point into greater conformity with those of BX and Phlx, thereby creating more consistent standards among the affiliated exchanges owned by Nasdaq, Inc.

By-Law Article III, Section 5(c)

The Exchange believes that the proposed rule change in By-Law Article III, Section 5(c) to provide that the ROC shall be comprised of at least three members is consistent with the Act because it will promote transparency to the Exchange’s current practices by conforming the By-Law language to the ROC Charter. As discussed above, the composition requirements that all ROC members be Public Directors and “independent directors” as defined in Nasdaq Rule 5605 will remain unchanged with this proposal, thereby ensuring that an independent Board committee will continue to be responsible for the regulatory oversight of the Exchange. Lastly, the proposed technical changes in Section 5(c) to update Nasdaq’s name will bring greater clarity to the Exchange’s rules, which protects investors and the public interest.

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

Because the proposed rule change relates to the corporate governance of the Exchange and not to the Exchange’s operations, 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.

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) of the Act and

24 See supra note 14.
25 See supra notes 16 and 17, with accompanying text.
26 See supra note 18.
27 See supra note 20.
subparagraph (f)(6) of Rule 19b–4 thereunder. 29

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act 30 normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) 31 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. The Commission notes that waiver of the operative delay would allow the Exchange to effect the changes to its Rulebook and By-Laws, which would eliminate obsolete provisions in the Exchange’s Rulebook and better align provisions in the Exchange’s By-Laws with those in the By-Laws of its affiliates, in time for the Exchange Board meeting on September 25, 2019. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing. 32

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. Please include File Number SR–MRX–2019–21 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–MRX–2019–21. 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 its 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–MRX–2019–21 and should be submitted on or before October 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.33

Jill M. Peterson,
Assistant Secretary.

[FR Doc. 2019–22020 Filed 10–8–19; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule

October 3, 2019.

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 September 20, 2019, MIAX PEARL, LLC ("MIAX PEARL" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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 is filing a proposal to amend the MIAX PEARL Fee Schedule (the "Fee Schedule") to establish Application Programming Interface ("API") Testing and Certification fees.


The text of the proposed rule change is available on the Exchange’s website at http://www.miaxoptions.com/rule-filings/pearl at MIAX PEARL’s principal office, 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