

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96939; File No. SR-NASDAQ-2023-002]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 5910 and 5920 To Remove Expired and Obsolete Provisions

February 15, 2023.

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 February 6, 2023, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I 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 Rules 5910 and 5920 to remove expired and obsolete provisions.

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

#### 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 purpose of the proposed rule change is to remove expired and obsolete provisions from Rule 5910 and Rule 5920.

Nasdaq recently adopted rule changes to modify entry and all-inclusive annual fees for certain companies, which became operative on January 1, 2023.

The purpose of the proposed rule change was to (i) replace the tiered entry fee structure with a flat fee of \$270,000 when a Company first lists a class of equity securities on the Nasdaq Global or Global Select Market; (ii) modify the Exchange’s all-inclusive annual listing fees for all domestic and foreign companies listing equity securities covered by Listing Rules 5910 and 5920 on the Nasdaq Global Select, Global and Capital Markets; (iii) replace the two-tier entry fee structure with a flat fee of \$80,000 when an Acquisition Company, as defined below, first lists a class of equity securities on Nasdaq; (iv) to adopt an all-inclusive annual listing fee structure specific to Acquisition Companies listing on the Nasdaq Capital Market; and (v) to replace the current three-tier all-inclusive annual listing fee structure for all Acquisition Companies with a two-tier structure.<sup>3</sup> As a result, Rule 5910(a)(1) and Rule 5920(a)(1) contain entry fee provisions that are no longer applicable because such provisions applied to companies that submitted an application and listed on Nasdaq prior to January 1, 2023. Similarly, the all-inclusive annual listing fee schedules in Rule 5910(b)(2)(A)–(D) and (F) and Rule 5210(b)(2)(A)–(D) and (F) contain provisions describing obsolete all-inclusive annual listing fees. Nasdaq proposes to remove these expired and obsolete provisions from Rules 5910 and 5920.

In addition, Nasdaq proposes to remove other expired provisions in Rules 5910(a)(11), 5920(a)(11) and 5920(a)(12). Nasdaq is also proposing other non-substantive clarifying and conforming adjustments, including renumbering revised rules as applicable.

Nasdaq believes that the proposed changes will clarify and enhance transparency of the rules.

##### 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 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, by clarifying the rule language, and enhancing transparency and readability of the rules without substantively changing these rules.

#### 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 because the proposal does not make any substantive changes to the existing rules. The proposal merely removes expired and obsolete provisions of Rules 5910 and 5920, clarifies the rule language, and enhances transparency and readability of the rules without substantively changing these rules.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</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

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

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</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>14</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.

<sup>3</sup> See Securities Exchange Act Release No. 96532 (December 19, 2022), 87 FR 79028 (December 23, 2022) (SR-Nasdaq-2022-068).

it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.

#### 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-NASDAQ-2023-002 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-NASDAQ-2023-002. 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 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-NASDAQ-2023-002, and should be submitted on or before March 15, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96933; File No. SR-CboeBYX-2023-003]

### Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Applicable Exchange Rules, Usage of Data Feeds, To Disclose That the Exchange Will Utilize Direct Data Feeds From MEMX LLC

February 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 9, 2023, Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission (the "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

Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") proposes to update Rule 11.26(a), Usage of Data feeds, to disclose that the Exchange will utilize direct data feeds from MEMX LLC ("MEMX") when performing: (i) order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes. The Exchange has designated the proposed rule change as noncontroversial and provided the Commission with notice required by Rule 19b-4(f)(6)(iii) under the Act. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/byx/](http://markets.cboe.com/us/equities/regulation/rule_filings/byx/)), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

<sup>8</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.

#### 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 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 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to update Exchange Rule 11.26(a)<sup>3</sup> regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i) order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes. The Exchange currently utilizes MEMX market data from the Consolidated Quotation system ("CQS")/UTP Quotation Data Feed ("UQDF") for these purposes on BYX. The Exchange intends to begin to utilize MEMX's direct feeds in place of market data from the CQS/UQDF. Accordingly, the Exchange seeks to amend Exchange Rule 11.26(a) to reflect that the Exchange will utilize MEMX's direct feeds in place of market data from the CQS/UQDF when performing order handling, order execution, routing, and related compliance processes for equity securities on BYX. Once the Exchange begins to utilize direct feeds from MEMX, the Exchange will begin to utilize the CQS/UQDF as a secondary source of data from MEMX on BYX.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>4</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>5</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

<sup>3</sup> The Exchange plans to implement the proposed rule change on a date that will be circulated in a notice from the CboeTrade Desk.

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

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