

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89623; File No. SR–NASDAQ–2020–045]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Obsolete References to NASD Rules in the Nasdaq Rulebook

August 20, 2020.

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 August 7, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “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 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 update obsolete references to NASD rules in the Nasdaq rulebook (“Rulebook”) and make other related changes.

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

In 2008, the Financial Industry Regulatory Authority (FINRA) began a

process to harmonize and streamline its rules by retiring, consolidating, and relocating NASD rules into the FINRA rulebook.<sup>3</sup> Consistent with those changes, the Exchange is proposing to replace outdated NASD references in its Rulebook, delete unnecessary or duplicative rule text, and consolidate certain Nasdaq rules.

Generally, where appropriate, the Exchange will replace the term “Association” and the “NASD” acronym with the acronym “FINRA.” Specifically, Nasdaq will provide cites to the updated FINRA rules and current internal references as provided in the relocated FINRA rules. Additionally, the Exchange proposes to update internal cross-references as necessary.

###### A. Global Changes

As previously indicated, Nasdaq proposes to replace the terms “Association” and/or “NASD” with the term “FINRA,” without making other accompanying changes to the rules (this will also include a few, necessary grammatical changes, such as removing where appropriate the word “the”). Accordingly, the Exchange will update Rules 2830; 3360; 11210; IM–11710; 11860; 11870; General 1; General 2, Section 5; General 2, Section 7; General 9, Section 21; General 9, Section 33; and Equity 7, Section 111. The Exchange notes that it will not update references to NASD notices in its Rulebook. Specifically, the notices referenced in General 9, Section 20(e) (“NASD Notice to Members 97–19”) and Rule 4630(d) (“NASD Notice to Members 91–45”) will remain unchanged.

###### B. Specific Rule Changes

The Exchange proposes the following changes to capture the amendments and relocation of rules in the FINRA rulebook. Additionally, the cross-references updates are intended to keep the Nasdaq rules aligned with their corresponding FINRA rules:

Nasdaq Rule 2830. Investment Company Securities

The Exchange proposes to update the NASD Rule 2830 reference in this rule and replace it with a reference to FINRA Rule 2341 (“Investment Company Securities”). FINRA Rule 2341 was adopted without any substantive changes to the NASD rule text.<sup>4</sup>

<sup>3</sup> See *Information Notice*, March 28, 2008 (Rulebook Consolidation Process) at <https://www.finra.org/sites/default/files/NoticeDocument/p038121.pdf>.

<sup>4</sup> See Securities Exchange Act Release No. 78130 (June 22, 2016), 81 FR 42016 (June 28, 2016) (SR–FINRA–2016–019).

Moreover, to be consistent with cross-reference updates in current FINRA Rule 2341, the Exchange will update the cross-reference to NASD Rule 2820 with FINRA Rule 2320. Additionally, the Exchange will update Rule 2830(b)(3) by replacing the NASD Rule 2420 reference with FINRA Rule 2040 and update the Nasdaq rule text to track the text of FINRA Rule 2040(a). Finally, the Exchange will replace the NASD Rule 2230 reference with FINRA Rule 2232.

Nasdaq Rule 3360. Short-Interest Reporting

In 2008, FINRA Rule 4560 was adopted to include the short interest reporting requirements of the substantially similar NASD Rule 3360 and Incorporated NYSE Rules 421(1) and 421.10 with non-substantive changes to the NASD rule text.<sup>5</sup> In 2010, FINRA made further amendments to the rule that were intended to eliminate the definition of “OTC Equity Security” in FINRA Rule 4560 (Short-Interest Reporting) and to clarify that the rule applied to all equity securities except restricted equity securities.<sup>6</sup>

The Exchange proposes to update Nasdaq Rule 3360(a) by replacing the NASD Rule 3360 reference with FINRA Rule 4560 (“Short-Interest Reporting”). The Exchange will not update Rule 3360 to include the reference to “Restricted Equity Securities” found in FINRA Rule 4560 since, following the termination of the PORTAL Market,<sup>7</sup> such securities are no longer listed or traded in the Exchange; relatedly, the Exchange will omit the reference to FINRA Rule 6420 since a cross-reference to the definition of Restricted Equity Securities is not required. Further, the Exchange will add the word “all” before the word “securities” but, unlike the FINRA rule, will not insert the word “equities” because the Exchange also lists options securities. Finally, the Exchange will remove a sentence concerning the reporting obligations to reflect changes also made in the FINRA rule.<sup>8</sup>

The Exchange also proposes to amend current Rule 3360(b) and (c) and adopt the text of current FINRA Rule 4560(b) and (c).

<sup>5</sup> See Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (SR–FINRA–2008–033).

<sup>6</sup> See Securities Exchange Act Release No. 61979 (April 23, 2010), 75 FR 23316 (May 3, 2010) (SR–FINRA–2010–003).

<sup>7</sup> See Securities Exchange Act Release No. 58638 (September 24, 2008), 73 FR 57188 (October 1, 2008) (SR–NASDAQ–2008–076).

<sup>8</sup> See Securities Exchange Act Release No. 66872 (April 27, 2012), 77 FR 26340 (May 3, 2012) (SR–FINRA–2012–001).

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

<sup>2</sup> 17 CFR 240.19b–4.

**Nasdaq Rule 4200. Definitions**

The Exchange proposes to update the NASD Rule 2710(b)(11) reference in this rule and replace it with a reference to FINRA Rule 5190 (“Notification Requirements for Offering Participants”). In 2008, NASD Rules 2710(b)(10) and (11) were relocated into FINRA Rule 5190 to consolidate and streamline all Regulation M-related notice requirements.<sup>9</sup>

The Exchange also proposes to replace in Rule 4200(a)(2) and (b) the cross-reference to Nasdaq Rule 4623 (“Alternative Trading Systems”) with Nasdaq Rule 4624. Consistent with FINRA Rule 5190(e), a Nasdaq member’s notification obligation, as described in Nasdaq Rule 4200 is detailed under Nasdaq Rule 4624 (“Penalty Bids and Syndicate Covering Transactions”).

**Nasdaq Rule 6110. Definitions**

The Exchange proposes to update the NASD Rule 6120 reference in Nasdaq Rule 6110(g) and replace it with a reference to FINRA Rule 7220A (“Trade Reporting Participation Requirements”). In 2008, the NASD Rule 6100 Series was relocated and amended to form the FINRA Rule 7200A Series, applicable to the FINRA/Nasdaq Trade Reporting Facility, and the Rule 7300 Series, applicable to FINRA’s Over the Counter Reporting Facility.<sup>10</sup> The Exchange proposes also to conform its Rule 6110(g) by removing the reference to UTP Exchanges which are not listed under FINRA Rule 7220A.

**Nasdaq General 2, Section 15. Business Continuity Plans**

The Exchange proposes to update the NASD Rule 3510 reference in this rule and replace it with a reference to FINRA Rule 4370 (“Business Continuity Plans and Emergency Contact Information”). FINRA Rule 4370 was adopted to include NASD Rules 3510 (“Business Continuity Plans”) and NASD Rule 3520 (“Emergency Contact Information”) without substantive changes to the rule text.<sup>11</sup>

Additionally, the Exchange proposes to include a new paragraph (b) that will indicate that references in FINRA Rule 4370 to Rule 4517 shall be construed as references to Nasdaq General 2, Section 16.

<sup>9</sup> See Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (SR-FINRA-2008-039).

<sup>10</sup> See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-2008-021).

<sup>11</sup> See Securities Exchange Act Release No. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009) (SR-FINRA-2009-036).

**Nasdaq General 9, Section 1(c). Front Running Policy**

The Exchange proposes to update the NASD IM-2110-3 reference in the Nasdaq rule and replace it with a reference to current FINRA Rule 5270. The NASD interpretive material was relocated to FINRA Rule 5270 to broaden its scope and provide clarity into an activity that is inconsistent with just and equitable principles of trade.<sup>12</sup>

**Nasdaq General 9, Section 1(f). Confirmation of Callable Common Stock**

The Exchange proposes to delete the duplicative text at the beginning of the section that currently reads “Exchange members and persons”. Next, the Exchange proposes to update the NASD IM-2110-6 reference in the Nasdaq rule and replace it with a reference to current FINRA Rule 2232. In 2009, the requirements of the NASD interpretive material were transferred to their current location in the FINRA rulebook.<sup>13</sup> FINRA Rule 2232 expanded the coverage of the relocated interpretive material’s requirements, clarifying that the requirement to disclose that the security is callable (and that further information is available from the member) applies to any equity security.

**Nasdaq General 9, Section 3. Communications With the Public and Section 4. Institutional Sales Material and Correspondence**

In 2012, FINRA adopted Rule 2210 (“Communications with the Public”) to encompass, among other provisions, NASD Rules 2210 and 2211, and NASD Interpretive Materials 2210-1 and 2210-4.<sup>14</sup> The Exchange proposes to consolidate the text of General 9, Sections 3 and 4 into current Section 3 and reserve current Section 4, as explained below.

Current Nasdaq General 9, Section 3(a) incorporates by reference FINRA Rule 2210 (“Communications with the Public”). Moreover, Section 3(a) provides that references to FINRA Rule 2211 shall be understood as references to Nasdaq Rule 2211. The Exchange proposes to delete from Section 3(a) the reference concerning Rule 2211.

The retired NASD Rule 2210 incorporated the definitions of “Correspondence” and “Institutional

<sup>12</sup> Securities Exchange Act Release No. 67774 (September 4, 2012), 77 FR 55519 (September 10, 2012) (SR-FINRA-2012-025).

<sup>13</sup> Securities Exchange Act Release No. 63150 (October 21, 2010), 75 FR 66173 (October 27, 2010) (SR-FINRA-2009-058).

<sup>14</sup> See Securities Exchange Act Release No. 66681 (March 29, 2012), 77 FR 20452 (April 4, 2012) (SR-FINRA-2011-035).

Sales Material” from NASD Rule 2211. When FINRA adopted Rule 2210, both definitions were merged into the current rule and the references to Rule 2211 were removed. It follows, that the Exchange removes the reference Rule 2211 as such is no longer necessary.

The Exchange also proposes to delete Section 3(b) and re-letter current Section 3(c) as (b). Current Section 3(b) incorporates by reference NASD IM-2210-1 which, as explained, was merged into FINRA Rule 2210. Updating current Section 3(b) to incorporate FINRA Rule 2210 will make the section redundant. Therefore, Section 3(b) will be deleted as it is no longer necessary.

The Exchange proposes to delete General 9, Section 4(a) because Section 3(a) already incorporates by reference FINRA Rule 2210. Furthermore, the Exchange believes that the exception in current Section 4(a) concerning NASD Rule 2211(d)(3) does not need to be added to Nasdaq General 9, Section 3(a), because that provision is no longer referenced in FINRA Rule 2210.

The Exchange also proposes to adopt current Section 4(b)(1) as Section 3(c), with a minor change. New Section 3(c) will provide that references to FINRA “membership” will be construed as references to membership with the Exchange.

Finally, the Exchange proposes to adopt part of the text in current Section 4(b)(2) as Section 3(d). New Section 3(d) will omit references to FINRA Rule 2210 (as such incorporation is already provided in Section 3(a)) and will state that references to FINRA Rules 4512<sup>15</sup> and 3110<sup>16</sup> shall be read, respectively, as references to Nasdaq General 9, Section 45 and Section 20.

**Nasdaq General 9, Section 9. Fairness Opinions**

The Exchange proposes to update the NASD Rule 2290 reference in this rule and replace it with a reference to FINRA Rule 5150 (“Fairness Opinions”). The aforementioned NASD rule was relocated to FINRA Rule 5150 with no changes to the rule text.<sup>17</sup>

**Nasdaq General 9, Section 11. Best Execution and Interpositioning**

The Exchange proposes to update the NASD Rule 2440 and IM-2440 references in this rule and replace them

<sup>15</sup> See Securities Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (SR-FINRA-2010-052).

<sup>16</sup> See Securities Exchange Act Release No. 71179 (December 23, 2013), 79 FR 79542 (December 30, 2013) (SR-FINRA-2013-025).

<sup>17</sup> See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-2008-028).

with a reference to FINRA Rule 2121 and its supplementary material (“Fair Prices and Commissions”). FINRA Rule 2121 was adopted without any substantive changes to the NASD rule text.<sup>18</sup>

#### Nasdaq General 9, Section 12. Customer Account Statements

The Exchange proposes to update the NASD Rule 2340 reference in this rule and replace it with a reference to FINRA Rule 2231 (“Customer Account Statements”). FINRA Rule 2231 was adopted without any substantive changes to the NASD rule text.<sup>19</sup>

Moreover, the Exchange will update the references to NASD Rules 2810 and 3110 as shown in Section 12(b). Specifically, the Exchange will replace the reference to NASD Rule 2810 with FINRA Rule 2310 (“Direct Participation Programs”)<sup>20</sup> and NASD Rule 3110 with FINRA Rule 4512 (“Customer Account Information”). The Exchange also proposes to add back to Section 12(b) Nasdaq Rule 2310A<sup>21</sup> that is equivalent to current FINRA Rule 2310. This cross-reference was inadvertently removed from the rulebook by a recent relocation filing.<sup>22</sup> Finally, the Exchange proposes to replace the reference of General 9, Section 30 with Section 45, because it corresponds to FINRA Rule 4512.

Additionally, the Exchange proposes to amend Section 12(c) by replacing the reference to General 5, Section 2 with a reference to the Nasdaq Rule 9600 Series. The Exchange needs to make this correction because there is no Section 2 under the General 5 title.

#### Nasdaq General 9, Section 13. Margin Disclosure Statement

The Exchange proposes to update the NASD Rule 2341 reference in this rule and replace it with a reference to FINRA Rule 2264 (“Margin Disclosure Statement”). FINRA Rule 2264 was adopted with only minor changes to the text of NASD Rule 2341, and those

changes were intended to clarify the submission of disclosure statements.<sup>23</sup>

The Exchange also proposes to amend Section 13(b) by updating the reference to NASD Rule 3110 with FINRA Rule 4512<sup>24</sup> and the reference to General 9, Section 30 with Section 45, because it corresponds to FINRA Rule 4512.

#### Nasdaq General 9, Section 16. Charges for Services Performed

The Exchange proposes to update the NASD Rule 2430 reference in this rule and replace it with a reference to FINRA Rule 2122 (“Charges for Services Performed”). FINRA Rule 2122 was adopted without any substantive changes to the NASD rule text.<sup>25</sup>

#### Nasdaq General 9, Section 17. Net Transactions With Customers

The Exchange proposes to update the NASD Rule 2441 reference in this rule and replace it with a reference to FINRA Rule 2124 (“Net Transactions with Customers”). FINRA Rule 2124 was adopted without any substantive changes to the NASD rule text.<sup>26</sup> The Exchange also proposes to adopt a cross-reference to FINRA Rule 4511, which has a corresponding Exchange rule under General 9, Section 30. Moreover, the Exchange proposes to add a cross-reference to FINRA Rule 4512 and a reference to the corresponding Exchange rule under General 9, Section 45.

#### Nasdaq General 9, Section 19. Discretionary Accounts

The Exchange proposes to update the NASD Rule 2510 reference in this rule and replace it with a reference to FINRA Rule 3260 (“Discretionary Accounts”). FINRA Rule 3260 was adopted without any substantive changes to the NASD rule text.<sup>27</sup>

Moreover, the Exchange will update the cross-references to NASD rules with their respective equivalent FINRA rules. Specifically, the Exchange will replace the NASD Rule 3010 reference with FINRA Rule 3110. Additionally, the Exchange will replace the NASD Rule 3110 reference with FINRA Rule 4512.<sup>28</sup> Finally, the Exchange proposes to replace the reference to General 9, Section 30 with Section 45, because it corresponds to FINRA Rule 4512.

<sup>23</sup> See Securities Exchange Act Release No. 60697 (September 21, 2009), 74 FR 49051 (September 25, 2009) (SR-FINRA-2009-052).

<sup>24</sup> See *supra* note 15.

<sup>25</sup> See Securities Exchange Act Release No. 73714 (December 2, 2014), 79 FR 72743 (December 8, 2014) (SR-FINRA-2014-049).

<sup>26</sup> See *supra* note 11.

<sup>27</sup> See *supra* note 19.

<sup>28</sup> See *supra* note 15.

Nasdaq General 9, Section 21. Supervisory Control System and Section 22. Annual Certification of Compliance and Supervisory Processes

The Exchange proposes to consolidate Sections 21 and 22 into one rule, Section 21 (“Supervisory Control System, Annual Certification of Compliance and Supervisory Processes”), as explained below. First, the Exchange proposes to update the NASD Rule 3012 reference in this rule and replace it with a reference to FINRA Rule 3120 (“Supervisory Control System”). FINRA Rule 3120 retained the former NASD rule’s testing and verification requirements for the member’s supervisory procedures and provided requirements for members reporting \$200 million or more in gross revenue.<sup>29</sup> The Exchange will also update the reference to Nasdaq Rule 3012, which was relocated to the Nasdaq shell as Nasdaq General 9, Section 21.<sup>30</sup>

Second, the Exchange will update the NASD Rule 3013 reference in Section 21(c) (“Annual Certification of Compliance and Supervisory Processes”) and replace it with a reference to FINRA Rule 3130 (“Annual Certification of Compliance and Supervisory Processes”). FINRA Rule 3130 was adopted to streamline and combine the requirements of NASD Rule 3013 and IM-3013.<sup>31</sup>

Third, the Exchange will re-letter the next paragraph, currently lettered as “(b)” (“For purposes of this Rule . . .”), as “(d)”. In re-lettered Section (d)(2), as previously explained, the Exchange will update the reference to NASD Rule 3013 with FINRA Rule 3130, which shall be read as a reference to Exchange’s corresponding rule under General 9, Section 21. Similarly, the Exchange proposes to update the cross-reference to NASD Rule 2110 with FINRA Rule 2010. In 2008, NASD Rule 2110 was renumbered as FINRA Rule 2010 with no changes to the rule text.<sup>32</sup> Additionally, the Exchange will change the General 9, Section 3 reference with Section 1(a), because it corresponds to FINRA Rule 2010.

Finally, the Exchange will delete and reserve Current General 9, Section 22, since its sub-sections are duplicative of sub-sections in Section 21.

<sup>29</sup> See *supra* note 16.

<sup>30</sup> See *supra* note 22.

<sup>31</sup> See Securities Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (SR-FINRA-2008-030).

<sup>32</sup> See *supra* note 17.

<sup>18</sup> See Securities Exchange Act Release No. 72208 (May 21, 2014), 79 FR 30675 (May 28, 2014) (SR-FINRA-2014-023).

<sup>19</sup> See Securities Exchange Act Release No. 85589 (April 10, 2019), 84 FR 15646 (April 16, 2019) (SR-FINRA-2019-009).

<sup>20</sup> See Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 26902 (June 4, 2009) (SR-FINRA-2009-016).

<sup>21</sup> See Securities Exchange Act Release Nos. 61321 (January 8, 2010), 75 FR 3776 (January 22, 2010) (SR-NASDAQ-2010-002) and 61681 (March 10, 2010), 75 FR 12591 (March 16, 2010) (SR-NASDAQ-2010-033).

<sup>22</sup> See Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098).

Nasdaq General 9, Section 23. Outside Business Activities of an Associated Person

The Exchange proposes to update the NASD Rule 3030 reference in this rule and replace it with a reference to FINRA Rule 3270 (“Outside Business Activities of Registered Persons”). FINRA Rule 3270 was adopted to harmonize and simplify the events that constitute an outside business activity, expanding upon the obligations imposed in NASD Rule 3030, by prohibiting any registered person from doing business with another person as a result of any business activity outside the scope of the relationship with his or her member firm, unless prior written notice was provided to the member.<sup>33</sup>

Moreover, the Exchange will update the cross-reference to NASD Rule 3040 with FINRA Rule 3280.<sup>34</sup> The Exchange proposes also to update the reference to General 9, Section 23 with Section 24 (“Private Securities Transactions of an Associated Person”), because it corresponds to FINRA Rule 3280.

Nasdaq General 9, Section 24. Private Securities Transactions of an Associated Person

The Exchange proposes to update the NASD Rule 3040 reference in this rule and replace it with a reference to FINRA Rule 3280 (“Private Securities Transactions of an Associated Person”). FINRA Rule 3280 was adopted without any substantive changes to the NASD rule text.<sup>35</sup>

The Exchange will also update the cross-reference to NASD Rule 3050 with FINRA Rule 3210.<sup>36</sup> The Exchange proposes also to update the reference to General 9, Section 24 with Section 25 (“Transactions for or by Associated Persons”), because it incorporates FINRA Rule 3210.

Furthermore, the Exchange proposes to correct a typo in the quoted text of Nasdaq General 9, Section 24(b)(2). Specifically, the Exchange will substitute the word “immediately” with “immediate.”

Finally, the Exchange will replace a reference to NASD Rule 2790 with

FINRA Rule 5130.<sup>37</sup> The definition of “immediate family member,” cross-referenced in General 9, Section 24(b)(2), is currently located under FINRA Rule 5130(i)(5).

Nasdaq General 9, Section 25. Transactions for or by Associated Persons

The Exchange proposes to update the NASD Rule 3050 reference in this rule and replace it with a reference to FINRA Rule 3210 (“Accounts At Other Broker-Dealers and Financial Institutions”). FINRA Rule 3210 was adopted to consolidate NASD Rule 3050, Incorporated NYSE Rules 407 and 407A, and Incorporated NYSE Rule Interpretations 407/01 and 407/02. The rule was designed to streamline the provisions of the NASD and incorporated NYSE rules and to help facilitate effective oversight of the specified trading activities of associated persons of member firms.<sup>38</sup>

Nasdaq General 9, Section 31. Use of Information Obtained in Fiduciary Capacity

The Exchange proposes to update the NASD Rule 3120 reference in this rule and replace it with a reference to FINRA Rule 2060 (“Use of Information Obtained in Fiduciary Capacity”). FINRA Rule 2060 was adopted without any changes to the NASD rule text.<sup>39</sup>

Nasdaq General 9, Section 33. Reporting Requirements for Clearing Firms

The Exchange proposes to update the NASD Rule 3150 reference in this rule and replace it with a reference to FINRA Rule 4540 (“Reporting Requirements for Clearing Firms”). FINRA Rule 4540 was adopted without any substantive changes to the NASD rule text.<sup>40</sup>

Furthermore, the Exchange proposes to amend Section 33(c)(1) by replacing the reference to General 5, Section 2 with a reference to the Nasdaq Rule 9600 Series. The Exchange needs to make this correction because there is no Section 2 under the General 5 title.

Finally, the Exchange proposes to update the reference to Nasdaq Rule 3150, which was relocated to the Nasdaq shell as Nasdaq General 9, Section 33.<sup>41</sup>

Nasdaq General 9, Section 34. Extensions of Time Under Regulation T and SEC Rule 15c3-3

The Exchange proposes to update the NASD Rule 3160 reference in this rule and replace it with a reference to FINRA Rule 4230 (“Required Submissions for Requests for Extensions of Time Under Regulation T and SEA Rule 15c3-3”). FINRA Rule 4230 was adopted largely based on the text of NASD Rule 3160, with a clarification to the original rule text regarding the reporting obligations of clearing members.<sup>42</sup>

The Exchange will also update the reference to Nasdaq Rule 3160, which was relocated to the Nasdaq shell as Nasdaq General 9, Section 34.<sup>43</sup>

Nasdaq General 9, Section 38. Margin Requirements

The Exchange proposes to update the NASD Rule 2520 reference in this rule and replace it with a reference to FINRA Rule 4210 (“Margin Requirements”). In 2010, NASD Rules 2520, 2521, 2522, and IM-2522 were combined and consolidated into a single rule intended to improve the organization of margin rules and improve their readability.<sup>44</sup>

The Exchange proposes also to amend Section 38(d) by replacing the reference to General 5, Section 2 with a reference to the Nasdaq Rule 9600 Series. The Exchange needs to make this correction because there is no Section 2 under the General 5 title.

Nasdaq General 9, Section 45. Customer Account Information

The Exchange proposes to update the NASD Rule 2510 reference in this rule and replace it with FINRA Rule 3260 (“Discretionary Accounts”). FINRA Rule 3260 was adopted without any changes to the original NASD rule text.<sup>45</sup>

The Exchange also proposes to delete from the rule the text that reads “(or any successor FINRA rule)” since the NASD rule is now relocated to FINRA Rule 3260. Finally, the Exchange will replace the General 9, Section 18 reference with Section 19 (“Discretionary Accounts”), because it corresponds to FINRA Rule 3260.

Moreover, the Exchange will update General 9, Section 45(b)(2) to provide that General 9, Section 29 is equivalent to FINRA Rule 2070. Finally, the Exchange proposes a minor correction in the rule by deleting the text that reads “and 28” that was inadvertently

<sup>33</sup> See Securities Exchange Act Release No. 62762 (August 23, 2010), 75 FR 53362 (August 31, 2010) (SR-FINRA-2009-042).

<sup>34</sup> See Securities Exchange Act Release No. 75757 (August 25, 2015), 80 FR 52530 (August 31, 2015) (SR-FINRA-2015-030).

<sup>35</sup> *Id.* See also Securities Exchange Act Release No. 80105 (February 24, 2017), 82 FR 12387 (March 2, 2017) (SR-FINRA-2017-004).

<sup>36</sup> See Securities Exchange Act Release No. 77550 (April 7, 2016), 81 FR 21924 (April 13, 2016) (SR-FINRA-2015-029).

<sup>37</sup> See Securities Exchange Act Release No. 58421 (August 25, 2008), 73 FR 51032 (August 29, 2008) (SR-FINRA-2008-025).

<sup>38</sup> See *supra* note 36.

<sup>39</sup> See Securities Exchange Act Release No. 61071 (November 30, 2009), 74 FR 64109 (December 7, 2009) (SR-FINRA-2009-067).

<sup>40</sup> See *supra* note 19.

<sup>41</sup> See *supra* note 22.

<sup>42</sup> See Securities Exchange Act Release No. 62482 (July 12, 2010), 75 FR 41562 (July 16, 2010) (SR-FINRA-2010-024).

<sup>43</sup> See *supra* note 22.

<sup>44</sup> See *supra* note 42.

<sup>45</sup> See *supra* note 19.

introduced during a recent rule relocation.<sup>46</sup>

Nasdaq General 9, Section 47. Approval and Documentation of Changes in Account Name or Designation

The Exchange proposes to update the NASD Rule 2510 reference in this rule and replace it with FINRA Rule 3260 (“Discretionary Accounts”). FINRA Rule 3260 was adopted without any changes to the original NASD rule text.<sup>47</sup> The Exchange also proposes to delete from the rule the text that reads “(or any successor FINRA rule)” since the NASD rule is now relocated to FINRA Rule 3260. Finally, the Exchange will replace the Exchange General 9, Section 18 reference with Section 19, because it corresponds to FINRA Rule 3260.

Nasdaq General 9, Section 49. Payments Involving Publications That Influence the Market Price of a Security

The Exchange proposes to update the NASD Rule 2711 reference in this rule and replace it with a reference to FINRA Rule 2241 (“Research Analysts and Research Reports”). Specifically, the research report’s definition referenced in General 9, Section 49(b)(3) was relocated to current FINRA Rule 2241(a)(11). That definition was amended to exclude communications concerning open-end registered investment companies not listed or traded on an exchange.<sup>48</sup>

The Exchange also proposes to delete the paragraph at the end of the rule concerning the consolidation of FINRA rules, since FINRA has completed the relocation of its rules.

Nasdaq Equity 7, Section 111. Nasdaq SIP: Nasdaq Level 1 Service

The Exchange proposes to update the cross-reference to the NASD 6600 Rule Series with a reference to FINRA 6400 Rules Series (“Quoting and Trading in OTC Equity Securities”).<sup>49</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>50</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>51</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by bringing greater transparency to its rules by updating the

references to the FINRA rules previously described. The Exchange’s proposal is consistent with the Act and will protect investors and the public interest by harmonizing its rules and clarifying outdated references so that Exchange members and the general public can readily locate FINRA rules that are incorporated by reference into the Rulebook.

The reference and cross-reference updates, re-lettering, deleting unnecessary or duplicative text, consolidating certain Nasdaq rules, and other minor technical changes will bring greater transparency to Nasdaq’s Rule structure. The Exchange believes its proposal will benefit investors and the general public by increasing the transparency of its Rulebook.

### 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 Exchange believes that the proposed amendments do not impose an undue burden on competition because the amendments to update the references and cross-references in its Rulebook are intended to bring greater clarity to the Exchange’s rules. The reference and cross-reference updates, re-lettering, deleting unnecessary or duplicative text, consolidating certain Nasdaq rules, and other minor technical changes will bring greater transparency to Nasdaq’s Rulebook.

### 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>52</sup> and Rule 19b-4(f)(6) thereunder.<sup>53</sup>

<sup>52</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>53</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,

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>54</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>55</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. Waiver of the operative delay would allow the Exchange to immediately update its outdated rules and otherwise make its rules more consistent with corresponding FINRA rules that it incorporates by reference. 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 30-day operative delay and designates the proposed rule change operative upon filing.<sup>56</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-NASDAQ-2020-045 on the subject line.

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>54</sup> 17 CFR 240.19b-4(f)(6).

<sup>55</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>56</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>46</sup> See *supra* note 22.

<sup>47</sup> See *supra* note 19.

<sup>48</sup> See Securities Exchange Act Release No. 75471 (July 16, 2015), 80 FR 43482 (July 22, 2015) (SR-FINRA-2014-047).

<sup>49</sup> See *supra* note 10.

<sup>50</sup> 15 U.S.C. 78f(b).

<sup>51</sup> 15 U.S.C. 78f(b)(5).

*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-2020-045. 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-2020-045 and should be submitted on or before September 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>57</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-18680 Filed 8-25-20; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89621; File No. SR-ICEEU-2020-008]

### Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Futures and Options Stress Testing Policy and the Adoption of the Futures and Options Stress Testing Methodology Document

August 20, 2020.

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 August 6, 2020, ICE Clear Europe Limited ("ICE Clear Europe" or the "Clearing House") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II and III below, which Items have been prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(4)(ii) thereunder,<sup>4</sup> so that the proposal was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed amendments is for ICE Clear Europe to modify its Futures and Options Stress Testing Policy (the "F&O Stress Testing Policy" or "Policy") to update its F&O market stress scenarios to ensure all relevant products are covered and to make certain other updates and clarifications to be consistent with other ICE Clear Europe policies. In furtherance of these changes, ICE Clear Europe also proposes to adopt a Futures and Options Stress Testing Methodology Document ("F&O Stress Testing Methodology Document") which describes ICE Clear Europe's methodology for systematically applying the F&O Stress Testing Policy in situations where the required historical price data is not available. The revisions to the F&O Stress Testing Policy and the adoption of the F&O Stress Testing Methodology Document do not involve any changes to the ICE

Clear Europe Clearing Rules or Procedures.<sup>5</sup>

#### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

##### (A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### (a) Purpose

ICE Clear Europe is proposing to amend its F&O Stress Testing Policy as follows: (i) With respect to historical stress-testing scenarios, to update the methodology to include additional product groups, benchmark contracts and default shock values, in order to ensure that every cleared instrument is covered in the historical scenarios; (ii) with respect to theoretical stress-testing scenarios, to improve scenario implementations to ensure appropriate coverage of all relevant instruments; (iii) to update provisions relating to policy reviews and breach management; and (iv) to make various drafting clarifications and improvements. ICE Clear Europe is also proposing to adopt an F&O Stress Testing Methodology Document which would provide further detail with respect to the methodology applied to the stress-testing scenarios, particularly the historical stress-testing scenarios.

#### I. F&O Stress Testing Policy

##### General Drafting Clarifications and Improvements

By way of general drafting clarification and improvements, the amendments to the F&O Stress Testing Policy would remove the background description of the board risk appetite and the limit appetite as these are addressed in other ICE Clear Europe documentation. Certain terminology would be updated throughout the F&O Stress Testing Policy: Original Margin would be updated to Initial Margin. Reference to the F&O Risk Committee would be updated to the F&O Product Risk Committee. Product Groups would

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

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

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

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

<sup>5</sup> Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules.

<sup>57</sup> 17 CFR 200.30-3(a)(12).