

commitment underwritten offerings”³² because the structure “has the potential to broaden the scope of investors that are able to purchase securities in an initial public offering, at the initial public offering price, rather than in aftermarket trading” and “may allow for efficiencies in IPO pricing and allocation.”³³ Similarly, while the commenter expressed concern that that the expansion of direct listings may lead to a decline in effective governance at U.S. public companies, presumably because of the lack of an underwriter in the offering, Nasdaq believes that this concern is unsubstantiated and challenges in this context are not of such magnitude as to render the proposal inconsistent with the Act. Moreover, in approving the Primary Direct Floor Listing proposal the Commission concluded that it “does not view a firm commitment underwriting as necessary to provide adequate investor protection in the context of a registered offering.”³⁴ As a result, consistent with the purposes of the Act, the proposed rule change may provide investors with additional investment opportunities and companies with more options for becoming publicly traded.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments would not impose any burden on competition, but would rather increase competition. In that regard, the Commission recently approved a similar proposal to allow a Primary Direct Floor Listing on the New York Stock Exchange.³⁵ Allowing Nasdaq to have similar rules will give issuers interested in this pathway to access the capital markets a choice of listing venues, which will enhance competition among exchanges.

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

change, as modified by Amendment No. 1, 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-2020-057 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-2020-057. 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 such 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-2020-057, and should be submitted on or before March 23, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91202]

Order Granting Application by Nasdaq ISE, LLC for Exemption Pursuant to Section 36(a) of the Exchange Act From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to the Nasdaq Rule 1000 Series Incorporated by Reference

February 24, 2021.

Nasdaq ISE, LLC (the “Exchange”) has filed with the Securities and Exchange Commission (the “Commission”) an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ from the rule filing requirements of Section 19(b) of the Exchange Act² with respect to certain rules of The Nasdaq Stock Market LLC (“Nasdaq”) that the Exchange seeks to incorporate by reference (“Nasdaq Rule 1000 Series”).³ Section 36(a)(1) of the Exchange Act,⁴ subject to certain limitations, authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

The Exchange filed a proposed rule change⁵ under Section 19(b) of the Exchange Act to replace its existing membership rules, as set forth in General 3 of its rulebook, with the Rule 1000 Series of the Nasdaq rulebook, as such rules may be in effect from time to time. Namely, in the proposed rule change, the Exchange proposed to incorporate by reference the Nasdaq Rule 1000 Series such that Nasdaq Rule 1000 Series would be applicable to the Exchange's applicants, members, associated persons, and other persons subject to the Exchange's jurisdiction as though such rules were fully set forth within the Exchange's rulebook.⁶

¹ 15 U.S.C. 78mm(a)(1).

² 15 U.S.C. 78s(b).

³ See letter from Brett M. Kitt, Principal Associate General Counsel, Nasdaq Inc., to J. Matthew DeLesDernier, Assistant Secretary, Commission, dated December 30, 2020 (“Exemptive Request”).

⁴ 15 U.S.C. 78mm(a)(1).

⁵ See Securities Exchange Act Release No. 90903 (January 12, 2021), 86 FR 5284 (January 19, 2021) (SR-ISE-2020-43). Although the proposed rule change was filed pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act, and thereby became effective upon filing with the Commission, the Exchange stipulated in its proposal that the incorporation by reference would not be operative until such time as the Commission grants this Exemptive Request.

⁶ See note 5, *supra*.

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 85815.

³⁵ See NYSE Approval, above footnote 30.

³⁶ 17 CFR 200.30-3(a)(12).

The Exchange has requested, pursuant to Rule 0–12 under the Exchange Act,⁷ that the Commission grant the Exchange an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to the Exchange's rules that are effected solely by virtue of a change to the Nasdaq Rule 1000 Series that are incorporated by reference. Specifically, the Exchange requests that it be permitted to incorporate by reference changes made to the Nasdaq Rule 1000 Series that are cross-referenced in the Exchange's rules without the need for the Exchange to file separately the same proposed rule change pursuant to Section 19(b) of the Exchange Act.⁸

The Exchange represents that the Nasdaq Rule 1000 Series are not trading rules.⁹ Moreover, the Exchange states that it proposes to incorporate by reference a category of rules (rather than individual rules within a category).¹⁰ The Exchange also represents that, as a condition of this exemption, the Exchange will provide written notice to its applicants and members whenever Nasdaq proposes a change to Nasdaq Rule 1000 Series.¹¹

According to the Exchange, this exemption is necessary and appropriate because it will result in the Exchange's membership rules and processes being consistent with the relevant cross-referenced Nasdaq membership rules and processes at all times.¹² The Exchange states that harmonization of the membership rules and processes between the Exchange and Nasdaq will ease compliance burdens for those seeking membership on both exchanges and increase internal efficiencies associated with administering the membership rules and processes of each exchange.¹³

The Commission has issued exemptions similar to the Exchange's request.¹⁴ In granting similar

exemptions, the Commission stated that it would consider future exemption requests, provided that:

- A self-regulatory organization ("SRO") wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0–12 under the Exchange Act;¹⁵

- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and

- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.¹⁶

The Commission believes that the Exchange has satisfied each of these conditions. Further, the Commission also believes that granting the Exchange an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use

reference); 80338 (March 29, 2017), 82 FR 16464 (April 4, 2017) (order granting exemptive request from MIAx PEARL, LLC relating to rules of Miami International Securities Exchange, LLC incorporated by reference); 72650 (July 22, 2014), 79 FR 44075 (July 29, 2014) (order granting exemptive requests from NASDAQ OMX BX, Inc. and the NASDAQ Stock Market LLC relating to rules of NASDAQ OMX PHLX LLC incorporated by reference); 67256 (June 26, 2012), 77 FR 39277, 39286 (July 2, 2012) (order approving SR–BX–2012–030 and granting exemptive request relating to rules incorporated by reference by the BX Options rules); 61534 (February 18, 2010), 75 FR 8760 (February 25, 2010) (order granting BATS Exchange, Inc.'s exemptive request relating to rules incorporated by reference by the BATS Exchange Options Market rules) ("BATS Options Market Order"); and 57478 (March 12, 2008), 73 FR 14521, 14539–40 (March 18, 2008) (order approving SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080, and granting exemptive request relating to rules incorporated by reference by The NASDAQ Options Market).

¹⁵ See 17 CFR 240.0–12 and Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) ("Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule").

¹⁶ See BATS Options Market Order, *supra* note 14 (citing Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) (order granting exemptive request relating to rules incorporated by reference by several SROs) ("2004 Order")).

of the Commission's and the Exchange's resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.¹⁷ The Commission therefore finds it appropriate in the public interest and consistent with the protection of investors to exempt the Exchange from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described rules it incorporates by reference. This exemption is conditioned upon the Exchange promptly providing written notice to its applicants and members whenever Nasdaq changes a rule that the Exchange incorporates by reference.

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act,¹⁸ that the Exchange is exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the rules identified in the Exemptive Request, provided that the Exchange promptly provides written notice to its applicants and members whenever Nasdaq proposes to change a rule that the Exchange has incorporated by reference.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91203]

Order Granting Application by Cboe C2 Exchange, Inc. for Exemption Pursuant to Section 36(a) of the Exchange Act From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference

February 24, 2021.

Cboe C2 Exchange, Inc. ("C2" or the "Exchange") has filed with the Securities and Exchange Commission (the "Commission") an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ from the rule filing requirements of Section 19(b) of the

¹⁷ See BATS Options Market Order, *supra* note 14, 75 FR at 8761; *see also* 2004 Order, *supra* note 16, 69 FR at 8502.

¹⁸ 15 U.S.C. 78mm.

¹⁹ 17 CFR 200.30–3(a)(76).

¹ 15 U.S.C. 78mm(a)(1).

⁷ 17 CFR 240.0–12.

⁸ See Exemptive Request, *supra* note 3.

⁹ *Id.*

¹⁰ *Id.* at 2 n.7.

¹¹ *Id.* at 3. The Exchange states that it will provide such notice via a posting on the same website location where the Exchange posts its own rule filings pursuant to Rule 19b–4(l) within the timeframe required by such Rule. In addition, the Exchange states that the website posting will include a link to the location on Nasdaq's website where the applicable proposed rule change is posted. *Id.* at 3 n.8.

¹² See *id.* at 2.

¹³ See *id.*

¹⁴ See, e.g., Securities Exchange Act Release Nos. 86896 (September 6, 2019), 84 FR 48186 (September 12, 2019) (order granting application by Nasdaq BX, Inc. for exemption pursuant to section 36(a) of the Exchange Act from the rule filing requirements of section 19(b) of the Exchange Act with respect to the Nasdaq Rule 1000 Series incorporated by