

Enhancement of Self-Regulatory Organization Rulebooks

Nasdaq, in a continuing effort to improve and modernize the various governing documents and Rulebooks of the various Nasdaq markets, has proactively undertaken several initiatives over the last several years to file proposals with regulatory bodies. The various initiatives are summarized below:

- Several years ago, with the advent of an independent regulatory testing group within OGC, The Nasdaq Stock Market LLC (“Nasdaq Stock Market”), Nasdaq PHLX LLC (“Phlx”) and Nasdaq BX, Inc. (“BX”) Rulebooks were updated to improve upon the trading rules within those Rulebooks to offer greater insight into the operation of the trading system. The regulatory testing group has enabled additional rules testing of the Nasdaq Stock Market, Nasdaq Phlx and Nasdaq BX markets in recent years.
- NASDAQ Futures, Inc. (“NFX”) underwent a Rulebook transformation over several years, specifically with the release of Dodd-Frank. This Rulebook was rewritten to modernize and conform its rules to that of other U.S. futures markets. NFX’s Rulebook was enhanced to provide specific product sections, which detail the manner in which those products trade on NFX. With the replatform to Genium INET, the trading rules were also scrutinized by regulatory testing and additional language was added to trading rules to provide greater specificity as to operation of the trading system.
- Phlx’s Rulebook, the oldest in the Nasdaq suite, was reviewed in full by a subgroup within Nasdaq, as well as a consultant, to determine where improvements could be made to modernize rules, remove obsolete and outdated language and add more specificity to trading rules. This Rulebook has received several updates as a result of that effort over the last few years. Final rule changes continue with an eye toward conformance to certain Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”) and Nasdaq MRX, LLC (“MRX”) rules.
- With the acquisition of ISE, GEMX and MRX, Nasdaq undertook a deep dive to identify, document, and evaluate differences between these Rulebooks and those of existing Nasdaq markets. Various rule changes were implemented to conform, where appropriate, certain administrative and regulatory rule changes. While replatforming these markets to the INET platform, various trading rules were adopted as well to conform certain practices of existing Nasdaq markets. Since the completion of the replatform, regulatory testing continues to review existing ISE, GEMX and MRX trading rules. OGC will file rule changes to provide additional details as to the operation of the trading system for ISE, GEMX and MRX trading rules.

- With respect to governing documents such as by-laws, articles of incorporation and limited liability company agreements, OGC made several filings to conform all governing documents of the 6 self-regulatory organizations.
- Currently, Nasdaq is undertaking a larger project to harmonize the 6 Rulebooks. This project will take on three phases (1) adopt consistent Rulebook shells for each market to conform the Rulebook sections on each market; (2) file rule changes to conform certain sections of the Rulebook, including Organization and Administration, Membership and Access, Regulation, Discipline and Arbitration; and (3) incorporate by reference these aforementioned Rulebook sections to require a single rule change to effect a rule amendment across all 6 markets. The Exchange believes that this harmonization project will create efficiencies in the Rules with administrative processes as well as increase efficiency for OGC in filing with the Securities and Exchange Commission. The rule changes to accomplish the first phase were filed with the Commission.
- Nasdaq filed to conform the names and application of the name “Nasdaq” throughout the 6 self-regulatory organization Rulebooks. ISE, GEMX and MRX were renamed at the beginning of 2017. With the renaming of Nasdaq, Inc. the names of the subsidiary markets were conformed within the various governing documents and Rulebooks.

Listings

- In a multi-year project that culminated in April 2009, Nasdaq reorganized and rewrote its Listing Rules. While no substantive changes were made, this initiative sought to recast the Listing Rules into a more logical structure, eliminate redundancies, apply plain English principles where needed, define commonly used terms and amend rule language for clarity.
- In 2016 and 2017, Nasdaq solicited public comment from market participants regarding whether and how the Nasdaq Stock Market can update its shareholder approval rules without sacrificing investor protections. Based on feedback received during these solicitations, Nasdaq intends to make certain changes to the shareholder approval rules that reflect the evolution of the capital markets since those rules were adopted.
- Beginning in 2012, Nasdaq undertook an effort to harmonize its listing rules for Exchange Traded Products (“ETPs”) with the rules of the other exchanges. This ongoing initiative seeks to ensure that the listing standards for ETPs are consistent across exchanges, thereby eliminating “regulatory arbitrage,” and that all classes of ETPs are eligible to list on the Nasdaq Stock Market.
- In 2013, Nasdaq proposed to add a listing requirement that companies be required to have an internal audit function. Based on concerns raised by listed companies and their representatives, Nasdaq withdrew the proposal, sought public comment and, based on the comments received, ultimately elected not to pursue such a rule change.