

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

THE NASDAQ STOCK MARKET LLC, NASDAQ
BX, INC., and NASDAQ PHLX LLC,

Petitioners,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

Case No. 20-1181

PETITIONERS' STATEMENT OF ISSUES

Pursuant to this Court's June 6, 2020 Order, petitioners The Nasdaq Stock Market LLC, Nasdaq BX, Inc., and Nasdaq PHLX LLC ("Nasdaq") respectfully submit the following non-binding statement of issues to be raised in this petition, which seeks review of the final order promulgated by the Securities and Exchange Commission (the "Commission") entitled Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data, Release No. 34-88827, 85 Fed. Reg. 28,702 (May 13, 2020) ("NMS Governance Order").

Nasdaq intends to raise the following issues on review:

Whether the Commission's promulgation of the NMS Governance Order was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law

because, among other reasons, (1) the Securities and Exchange Act of 1934 (the “Exchange Act”) and Regulation NMS do not permit the Commission to grant persons or entities other than self-regulatory organizations (“SROs”) voting power on the operating committee of a national market system plan, (2) the NMS Governance Order allocates votes to so-called “exchange groups,” rather than individual SROs, in violation of the Exchange Act and Regulation NMS, (3) the Commission failed to provide a reasoned explanation for its change of position and its disparate treatment of SROs based on their affiliation with an exchange group, (4) the Exchange Act and Regulation NMS do not permit the Commission to bar SROs from having any role in the selection of non-SRO representatives on the operating committee of a national market system plan, (5) the Commission’s exclusion of exchanges from serving as the administrator of the new national market system plan is unjustified and unsupported, and (6) the Commission failed to address comments objecting to its proposal when promulgating the NMS Governance Order.

Dated: July 6, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2020, I caused a true and correct copy of
Petitioners' Statement of Issues to be served on all parties via the ECF system.

/s/ Amir C. Tayrani

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