

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96452; File No. SR-NASDAQ-2022-069)

December 6, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Equity 4, Rule 4753 and Equity 4, Rule 4703

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 25, 2022, 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 clarify when Immediate or Cancel Orders for halted securities are cancelled by amending Equity 4, Rule 4753 and Equity 4, Rule 4703. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

First, the Exchange proposes to amend Equity 4, Rule 4753³, which governs the Nasdaq Halt Cross process, to clarify the Exchange's existing practice that (1) any IOC Order for a halted security that is entered prior to the Nasdaq Closing Cross and for which the halt remains in effect at the commencement of the Nasdaq Closing Cross, is cancelled immediately after the Nasdaq Closing Cross; and (2) any IOC Order for a halted security that is entered after the Nasdaq Closing Cross and for which the halt remains in effect at 8:00 p.m. ET (or 5:00 p.m. ET in the event of a Scheduled Early Close), is cancelled at 8:00 p.m. ET (or 5:00 p.m. ET in the event of a Scheduled Early Close). Second, the Exchange proposes to delete the Time-in-Force definition of "System Hours Immediate or Cancel" or "SIOC" contained in Equity 4, Rule 4703(a)(1) to avoid confusion. Finally, the Exchange proposes adding a cross-reference to Rule 4703(a)(1), which would reference the new language in Rule 4753.

An Order with a Time in Force of "Immediate or Cancel" or "IOC" is designated to deactivate or execute, as applicable, immediately after determining whether the Order is marketable. However, if an IOC Order is entered for a halted security, the System cannot determine the marketability of the Order. Assuming trading of the halted security does not resume, the Order is cancelled, either after the Nasdaq Closing Cross if the Order is entered prior to the Nasdaq Closing Cross or at 8:00 p.m. ET (or 5:00 p.m. ET in the event of a Scheduled

³ Hereinafter, references to the Rule 4000 Series shall mean the Rule Series set forth in Equity 4 of the Exchange's Rulebook.

Early Close) if the Order is entered after the Nasdaq Closing Cross. The proposed rule change is specific to IOC Orders for halted securities (for which a halt cross will occur).⁴

When an IOC Order for a halted security is received prior to the Nasdaq Closing Cross, the Order remains valid until the Nasdaq Closing Cross. If the security remains halted at the commencement of the Nasdaq Closing Cross, the Exchange cancels the Order immediately after the Nasdaq Closing Cross. For example, consider Stock A is halted at 11:00 a.m. ET. The Exchange receives an IOC Order for Stock A at 2:00 p.m. ET. The Nasdaq Closing Cross commences at 4:00 p.m. ET and Stock A remains halted. The IOC Order for Stock A is cancelled immediately after the Nasdaq Closing Cross. This practice is consistent with customer expectations and how the Exchange currently operates. If the halt is lifted prior to the Nasdaq Closing Cross, the Orders execute in the re-opening auction, if marketable, or otherwise cancel. To the extent the halt remains in place at the commencement of the Nasdaq Closing Cross, participants do not expect the Orders to remain eligible after hours and therefore, expect the IOC Orders to expire immediately after the Nasdaq Closing Cross.⁵ If the IOC Order for Stock A described above was not cancelled after the Nasdaq Closing Cross and the halt was lifted in the extended trading hours, the Order could get filled at an unexpected price, particularly during extended trading hours when many securities are thinly traded.

When an IOC Order for a halted security is received after the Nasdaq Closing Cross, the Order remains valid until 8:00 p.m. ET (or 5:00 p.m. ET in the event of a Scheduled Early

⁴ During any trading halt or pause for which a halt cross under Rule 4753 will not occur, orders entered during the trading halt or pause are not accepted, unless subject to instructions that the order will be directed to another exchange as described in Rule 4758. Rule 4120(c)(4)(B).

⁵ This is akin to the Exchange's practice to deactivate day orders after the Nasdaq Closing Cross. See Rule 4703(a)(5). The practice is also consistent with the definition of "Market Hours Immediate of Cancel" or "MIOC." See Rule 4703(a)(1).

Close). If the security remains halted at 8:00 p.m. ET (or 5:00 p.m. ET in the event of a Scheduled Early Close), the Exchange cancels the Order at 8:00 p.m. ET (or 5:00 p.m. ET in the event of a Scheduled Early Close). For example, consider Stock A is halted at 11:00 a.m. ET. The Exchange receives an IOC Order for Stock A at 4:01 pm ET, after the Nasdaq Closing Cross. In this example, the IOC Order for Stock A remains valid until 8:00 p.m. ET. If the security remains halted at 8:00 p.m. ET, the Order is cancelled at that time. This practice is consistent with customer expectations and how the Exchange currently operates. Participants who enter IOC Orders for halted securities after the Nasdaq Closing Cross intend for the Order to be eligible for execution in the extended hours session, ending at 8:00 p.m. ET (or 5:00 p.m. ET in the event of a Scheduled Early Close). If the Orders were not cancelled, the security may resume trading and the Order may be filled at a price not expected by the customer.

Notwithstanding the absence of express language in the Rules, the Exchange believes that the current practice is consistent with customer expectations. The Exchange is aware of no customer confusion on the issue. Nevertheless, the Exchange believes that the existing Rules would benefit from clarification so as to avoid the potential for any confusion in the future.

Accordingly, the Exchange proposes to add a new section (e) to Rule 4753 to codify the existing practice.

In addition, the Exchange proposes to delete the Time-in-Force definition of “System Hours Immediate or Cancel” or “SIOC” from Equity 4, Rule 4703(a)(1). Specifically, the Exchange proposes to delete the following language:

An Order with a Time-in-Force of IOC that is entered at any time between 4:00 a.m. ET and 8:00 p.m. ET may be referred to as having a Time-in-Force of "System Hours Immediate or Cancel" or "SIOC".

The defined term “System Hours Immediate or Cancel” or “SIOC” is not referenced elsewhere in Nasdaq’s Rules. Moreover, the language and purpose thereof are unclear. The Exchange believes that the language should be deleted to avoid confusion as the definitions of “Market Hours Immediate or Cancel” or “MIOC” and SIOC include overlapping hours. Furthermore, in the case of IOC Order for halted securities, the SIOC definition does not make clear the current practice that any IOC Order for a halted security that is entered prior to the Nasdaq Closing Cross is cancelled immediately after the Nasdaq Closing Cross if the security remains halted at the commencement of the Nasdaq Closing Cross. The Exchange also proposes adding a cross-reference to Rule 4703(a)(1), which would reference the new language in Rule 4753. The Exchange believes that the proposed deletion and cross-reference in Rule 4703, coupled with proposed Rule 4753(e), would help to avoid the potential for any confusion in the future.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ 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.

The Exchange believes that it is just and equitable, and in the interests of the public and investors, for the Exchange to (1) remove unnecessary language from and add a cross-reference in Rule 4703 and (2) amend Rule 4753 to clarify the Exchange's existing practice to cancel IOC Orders for halted securities as described above. The Exchange believes that the public and investors will benefit from increased clarity, which will help limit any potential confusion in the future.

The Exchange also believes that the Exchange's existing practice that (1) any IOC Order for a halted security that is entered prior to the Nasdaq Closing Cross and for which the halt remains in effect at the commencement of the Nasdaq Closing Cross, is cancelled immediately after the Nasdaq Closing Cross; and (2) any IOC Order for a halted security that is entered after the Nasdaq Closing Cross and for which the halt remains in effect at 8:00 p.m. ET (or 5:00 p.m. ET in the event of a Scheduled Early Close), is cancelled at 8:00 p.m. ET (or 5:00 p.m. ET in the event of a Scheduled Early Close) is consistent with the protection of investors and the public interest. This practice is consistent with both current practice and investor expectations. It helps to avoid unexpected executions that might occur if such Orders are not cancelled and there are significant changes in the price of the security once the halt is lifted, thereby protecting investors

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

and the public interest. Furthermore, the Exchange believes that codifying its current practice to cancel IOC Orders for halted securities as described above, consistent with customer expectations, is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanisms of a free and open market as it adds clarity to the Exchange's Rules and avoids the potential for any confusion..

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 proposal merely codifies and clarifies an existing practice of the Exchange to cancel IOC Orders for halted securities immediately after the Nasdaq Closing Cross in the case of an Order entered prior to the Nasdaq Closing Cross where the security remains halted upon commencement of the Nasdaq Closing Cross and at 8:00 p.m. ET (or 5:00 p.m. ET in the event of a Scheduled Early Close) in the case of an Order entered after the Nasdaq Closing Cross where the security remains halted at 8:00 p.m. ET (or 5:00 p.m. ET in the event of a Scheduled Early Close). The Exchange would also make technical changes to improve the clarity of the proposal. The proposed changes are designed to more clearly describe an existing practice and make technical and conforming changes to the Rules without changing existing practice and, therefore, the Exchange believes that the proposed changes will not impose a burden on competition.

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 Act⁸ and Rule 19b-4(f)(6)⁹ thereunder.¹⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹¹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹² 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 asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposed rule text codifies the Exchange's current practice of handling IOC orders for halted securities. In addition, it clarifies the Exchange's rules by deleting a term not used elsewhere and adding a cross-reference. The Commission believes that the proposed rule change does not raise any new or novel issues, and waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹³

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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.¹⁴

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2022-069.

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-2022-069. This file number should be included on the subject line if e-mail 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

¹⁴ 15 U.S.C. 78s(b)(3)(C).

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-2022-069, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Sherry R. Haywood,
Assistant Secretary.

¹⁵ 17 CFR 200.30-3(a)(12).