

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96903; File No. SR-NASDAQ-2023-001)

February 13, 2023

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Market Maker Requirements in Equity 2 Section 5 and Equity 2 Section 11

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 January 31, 2023, 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 amend Equity 2, 5 and Section 11 related to certain Market Maker requirements, as described further below.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/bx/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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

On December 2, 2022, Nasdaq proposed changes to amend certain Nasdaq Market Maker requirements. These changes were published in the Federal Register on December 21, 2022 (“Initial Filing”) and were immediately effective on January 2, 2023.³ However, the system updates necessary to implement the changes in the Initial Filing have not been completed. The updates will be completed by Q3 2023.

Due to the delay in these system updates, Nasdaq is proposing to reinsert certain rule text changes into Equity 2 Section 5(a)(2) and Section 11(a). More specifically, the Exchange is reinserting previously deleted references to a Market Maker’s and an Electronic Communications Network’s (“ECN”) use of a Primary MPID and additional MPIDs (“Supplemental MPIDs”) in Equity 2, Section 5(a)(2)(J) and Section 5(a)(2)(K). Although the Exchange has eliminated the distinction between Primary and Supplemental MPIDs, the technology updates that are required to remove the distinction from its system are expected to be completed in Q3 2023. To ensure that the rulebook is compliant with current system operations, the Exchange is proposing to reinsert the previously deleted references.

Additionally, the Exchange is proposing to amend Equity 2, Section 11(a). Specifically, the Exchange is proposing to amend the re-registration waiting period for Nasdaq Market Makers that terminate registration in a security. In the Initial Filing, the Exchange reduced the

³ See Securities Exchange Act Release No. 96507 (December 15, 2022), 87 FR 78154 (December 21, 2022) (“Initial Filing”).

re-registration waiting period from twenty business days to 5 business days⁴. However, the Exchange is proposing to roll back the rule text language to twenty business days because the system updates that are required to reduce the re-registration waiting period to 5 business days are not expected to be completed until Q3 2023. The Exchange represents that a rollback of the re-registration waiting period will not have an impact on any Nasdaq Market Maker because none have terminated registration in a security since the Initial Filing became effective. The Exchange also represents that no Nasdaq Market Maker will be affected by the rollback of the distinction between Primary and Secondary MPIDs because the Exchange has eliminated the distinction between Primary and Supplemental MPIDs.⁵ The proposed changes are identical to the rules previously removed from Equity 2, Section 5(a)(2)(J) and Section 5(a)(2)(K) in the Initial Filing. Similarly, the proposed change to the re-registration waiting period reinstates the time period that was previously removed from Equity 2, Section 11(a).

The Exchange is not proposing to modify any other aspect of the Initial Filing and no market participants has been affected by the proposed amendments to reinstate the rule text related to a Market Maker's and an ECN's use of a Primary MPID and Supplemental MPIDs.

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

⁴ See Initial Filing at 78154.

⁵ Id. at 78155.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

As discussed above, the Exchange has already eliminated the distinction between Primary and Supplemental MPIDs. Because the Exchange has an obligation to ensure that its rule text aligns with the operation of its system, the proposed rule changes are intended to remove any potential impediments to a free and open market and a national market system by keeping the previous rule text in place until technology updates to remove the distinction from our system are finalized.

Similarly, no market participants have been affected by the proposal to revert the re-registration waiting period for Nasdaq Market Makers that terminate registration in a security.⁸ The proposed rule change will remove any potential impediments to a free and open market and a national market system by allowing the Exchange to maintain compliance with its obligation to ensure that its rule text aligns with the operation of its system. When the system updates are ready, the Exchange will submit a subsequent rule filing to reinstate the reverted changes from the Initial Filing.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As explained above, the purpose of this proposal is to add certain rule text changes that were prematurely removed from Equity 2 Section 5(a)(2) and Section 11(a). Furthermore, as discussed above, the Exchange has represented that no Market Maker has been affected by the

⁸ Since the Initial Filing became effective, no market makers have terminated registration from a security.

distinction between Primary and Supplemental MPIDs because the Exchange has eliminated the distinction between Primary and Supplemental MPIDs, and no market maker has terminated registration or attempted to re-register in a security since the Initial Filing became operative on January 2, 2023. Therefore, the Exchange does not expect reinserting the proposed rule text to place any 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)(iii) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, 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 operative delay so that the proposal may become operative upon filing in order to permit the Exchange to immediately reflect rules that align with Nasdaq’s current system capabilities until Nasdaq

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

system updates are completed. The Commission thus believes that waiver of the 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.¹¹

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.

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-2023-001 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-2023-001. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

¹¹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2023-001, 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.¹²

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¹² 17 CFR 200.30-3(a)(12), (59).