

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98489; File No. SR-NASDAQ-2023-036)

September 22, 2023

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend Rule 4120 and Rule 4753

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 September 12, 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 self-regulatory organization. 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 Rule 4120 (Limit Up-Limit Down and Trading Halts) and Rule 4753 (Nasdaq Halt Cross) to set forth specific requirements for halting and resuming trading in a security that is subject to a reverse stock split.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified 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

In conjunction with the increase in overall reverse stock splits in recent years, Nasdaq proposes to amend Rule 4120 and Rule 4753 to set forth specific requirements for halting trading in a security that is subject to a reverse stock split and resuming trading using the Nasdaq Halt Cross. Current Rule 4120 does not specifically list rule reverse stock splits in its numerated circumstances in which Nasdaq may halt trading in a security. The proposed amendments will be specific to the automatic initiation, pre-market trading and opening of a Nasdaq-listed security undergoing a reverse stock split.

Background

Nasdaq has observed that the current market environment has led to an increase in reverse stock split activity. In 2022, Nasdaq processed 196 reverse stock splits, compared to 35 in 2021 and 98 in 2020. Just in the first quarter of 2023, Nasdaq processed 78 reverse stock splits, and projects significantly more throughout 2023. Reverse stock splits are often effected by smaller companies that do not have broad media or research coverage. In most cases, the companies are listed on the Capital Market tier and are conducting reverse stock splits to achieve compliance with Nasdaq’s \$1 minimum bid price requirement.³

³ Rule 5550(a)(2) specifies that a Company that has its Primary Equity Security listed on the Capital Market must have a minimum bid price of at least \$1 per share. See also Rule 5450(a)(1) (Global and Global Select Markets). Companies are afforded a grace period pursuant to Rule 5810(c)(3)(A) to regain compliance.

Nasdaq believes that the increase in companies effecting reverse stock splits warrants amendments to the trading halt rules to allow for Nasdaq to help reduce the potential for errors resulting in a material effect on the market resulting from market participants' processing of the reverse stock split, including incorrect adjustment or entry of orders. Nasdaq currently processes reverse stock splits overnight, with the security opening for trading at 4:00 a.m. EST in the pre-market hours (i.e., the trading session between 4:00 a.m. to 9:30 a.m. EST) on a split-adjusted basis. Recently, market participants have expressed concerns with allowing trading on an adjusted basis at 4:00 a.m., noting that it is not optimal because system errors or problems with orders may go unnoticed for a period of time when a security that has undergone a reverse stock split opens for trading with the other thousands of securities. These errors have the potential to adversely affect investors, market participants and the issuer.⁴ For example, in one recent instance problems in connection with the processing of a reverse stock split resulted in a broker executing trades selling more shares than customers held in their accounts, resulting in a temporary short position.

As such, Nasdaq believes it is appropriate to impose a regulatory halt, which would prohibit pre-market trading immediately after a reverse stock split and open trading in such securities using the Nasdaq Halt Cross⁵ process set forth in Rule 4753. The proposed new rule will allow for Nasdaq and market participants to better detect any errors or problems with orders

⁴ In a separate filing, Nasdaq also proposed changes to adopt specific notification and disclosure requirements for reverse stock splits. See Securities Exchange Act Release No. 98014 (July 28, 2023), 88 FR 51376 (August 3, 2023) (SR-Nasdaq-2023-21).

⁵ The "Nasdaq Halt Cross" is the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest. See Rule 4753(a)(4). "Eligible Interest" shall mean any quotation or any order that has been entered into the system and designated with a time-in-force that would allow the order to be in force at the time of the Halt Cross. See Nasdaq Rule 4753(a)(5).

for the security resulting from the reverse stock split before trading in the security begins and thereby avoid any material effect on the market.

Description of the Proposed Amendment

Nasdaq is proposing to: (1) amend Rule 4120(a) to provide the Exchange with explicit authority to declare a trading halt before the end of Post-Market Hours⁶ on the day immediately before the market effective date of a reverse stock split; and (2) amend Rule 4120(c) to include this halt in the existing procedures for initiating and terminating a trading halt. More specifically, proposed Rule 4120(a)(14) provides that Nasdaq shall halt trading of a security for which Nasdaq is the primary listing market before the end of the Post-Market Hours on the day immediately before the market effective date of a reverse stock split. A trading halt due to a reverse stock split will be mandatory pursuant to proposed Rule 4120(a)(14). Nasdaq also proposes to modify Rule 4120(c)(7)(A) to include the new halt authority proposed in Rule 4120(a)(14) in the reopening process currently applicable to halts under Rules 4120(a)(1), (4), (5), (6), (9), (10) and (11). In general, Nasdaq expects to initiate the halt at 7:50 p.m., prior to the close of post-market trading at 8:00 p.m. on the day immediately before the split is effective,⁷ and resume trading at 9:00 a.m. on the day the split is effective.⁸ Nasdaq believes that this halt and delayed opening will give sufficient time for investors to review their orders and the quotes

⁶ The term "Post-Market Hours" means the period of time beginning immediately after the end of Market Hours and ending at 8:00 p.m. ET. See Nasdaq Rule Equity 1, Section 1(a)(9).

⁷ Initiating the halt at approximately 7:50 p.m. will provide Nasdaq with a limited buffer to ensure that trading in a security that is undergoing a reverse stock split will not continue after the close of post-market trading.

⁸ Nasdaq may change the resumption time if, for example, there was an Extraordinary Market Activity that could interfere with a fair and orderly 9:00 a.m. resumption. "Extraordinary Market Activity" is defined in the Fiftieth Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis.

for the security and allow market participants to ensure that their systems have properly adjusted for the reverse stock split.

Nasdaq is also proposing to update Rule 4753(b) to include proposed Rule 4120(a)(14) in the list of numerated provisions that would be subject to the Nasdaq Halt Cross. As such, any security that is subject to a reverse stock split will be reopened using the Nasdaq Halt Cross prior to trading during market hours.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁹ Specifically, the proposal is consistent with Section 6(b)(5) of the Act¹⁰ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

As described above, the Exchange is seeking to amend rules related to halting and resuming trading in U.S.-listed equity securities subject to a reverse stock split. The Exchange believes that establishing a reverse stock split trading halt rule will protect investors by giving the Exchange automatic authority to act in situations where it is necessary to maintain fair and orderly markets. It will also ensure that the process for resuming trading following a reverse stock split halt is consistent with other types of halts initiated by Nasdaq. Currently, none of the provisions in Rule 4120 provide authority to pre-emptively halt during pre-market hours the trading in a security undergoing a significant corporate action that could lead to investor or

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

market confusion. The Exchange believes that the proposed amendments will provide greater transparency and clarity with respect to the manner in which trading will be halted due to a reverse stock split, and the process through which that halt will be implemented and terminated. Particularly, Nasdaq will not have the discretion of determining when to halt a security following a reverse stock split. Rather, following the reverse stock split of the security for which Nasdaq is the primary listing market, trading in the security will automatically halt prior to the close of post-market trading at 8:00 p.m. The proposed changes seek to achieve consistency with respect to the initiation and termination of a trading halt with respect to securities that have undergone a reverse stock split, while maintaining a fair and orderly market, protecting investors and protecting the public interest.

Additionally, establishing a mandatory trading halt for securities that have undergone a reverse stock split and resuming trading thereafter promotes fair and orderly markets and the protection of investors, because it encourages Nasdaq to consider the broader interests of the national market system and addresses potential concerns that system errors may affect immediate trading in those securities. Based on the foregoing, the Exchange believes that the proposed rules are consistent with Section 6(b)(5) of the Act¹¹ because they will promote just and equitable principles of trade and will remove any impediments to a free and open market and a national market system by allowing sufficient time for investors to review their orders and the quotes for a security that has undergone a reverse stock split, and allow market participants to ensure that their systems have properly accounted for the reverse stock split. As discussed previously, the Exchange believes that the proposed amendments establishing the authority and

¹¹ 15 U.S.C. 78f(b)(5).

process for reverse stock split trading halts and the resumption of trading is consistent with the Act, which itself imposes obligations on exchanges with respect to issuers that are listed.

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

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

The Exchange believes the proposal will not impose a burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change is designed to protect investors and facilitate a fair and orderly market, which are both important purposes of the Act. To the extent that there is any impact on intermarket competition, it is incidental to these objectives.

The Exchange does not believe that the proposed rule change imposes a burden on intra-market competition because the provisions apply to all market participants and issuers equally. In addition, information regarding the halting and resumption of trading will be disseminated using several freely accessible sources to ensure broad availability of information offered by the Exchange that are available to subscribers.

In addition, the proposals include provisions related to the declaration and timing of trading halts and the resumption of trading designed to avoid any advantage to those who can react more quickly than other participants.

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

Within 45 days of the date of publication of this notice in the Federal Register or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2023-036 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-2023-036. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2023-036 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Sherry R. Haywood,

Assistant Secretary.

¹² 17 CFR 200.30-3(a)(12).