

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98843; File No. SR-NASDAQ-2023-025)

November 1, 2023

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving a Proposed Rule Change Related to Notification and Disclosure of Reverse Stock Splits

I. Introduction

On June 21, 2023, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change related to notification and disclosure of reverse stock splits. The proposed rule change was published for comment in the Federal Register on August 3, 2023.³ On September 14, 2023, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 1, 2023.⁴ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Nasdaq is proposing to amend its rules regarding the notification and disclosure of reverse stock splits in light of recent increased volume in reverse stock split activity.⁵ Currently,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98014 (July 28, 2023), 88 FR 51376 (“Notice”). Comment received by the Commission on the proposed rule change is available on the Commission’s website at: <https://www.sec.gov/comments/sr-nasdaq-2023-025/srnasdaq2023025.htm>. The Commission received two comment letters in support of the proposed rule change. See Letter from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc., dated August 23, 2023 (“Virtu Letter”); Letter from Imran Javaid, Director and Association General Counsel, Robinhood Markets, Inc., dated October 24, 2023 (“Robinhood Letter”).

⁴ See Securities Exchange Act Release No. 98386, 88 FR 64936 (Sept. 20, 2023).

⁵ Nasdaq states that in 2022, Nasdaq processed 196 reverse stock splits, compared to 31 in 2021 and 94 in 2020. See Notice, supra note 3, at 51376. As of June 23, 2023, Nasdaq states that it has processed 164

a reverse stock split is considered a “Substitution Listing Event” under Nasdaq Rule 5005(a)(44).⁶ Nasdaq Rule 5250(e)(4) requires a company to notify Nasdaq about any “Substitution Listing Event (other than a re-incorporation or a change to a company’s place of organization) no later than 15 calendar days prior to the implementation of such event by filing the appropriate form as designated by Nasdaq.” While public disclosure of a reverse stock split is not specifically addressed under Nasdaq’s current rules, Nasdaq Rule 5250(b)(1) requires a company to make “prompt disclosure” of “any material information that would reasonably be expected to affect the value of its securities or influence investors’ decisions,” which Nasdaq interprets to include details on reverse stock splits.⁷ While “prompt” disclosure is not expressly defined in the Exchange’s rules, Nasdaq states that it has published an FAQ stating that “[t]his disclosure should be disseminated prior to, or in conjunction with, the announcements that Corporate Data Operations will make on the day prior to the market effective date at approximately 1:00 p.m.”⁸

reverse stock splits, and projects significantly more throughout 2023. See id. In most cases, Nasdaq observes, companies are conducting reverse stock splits to achieve compliance with Nasdaq’s \$1 bid price requirement to remain on the Capital Market tier. See id. Nasdaq Rule 5550(a)(2) states 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 Nasdaq Rule 5450(a)(1) (Global and Global Select Markets).

⁶ Nasdaq Rule 5505(a)(44) states, in part, that a “Substitution Listing Event” means: “a reverse stock split, re-incorporation or a change in the Company’s place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company’s listed shares for another security, the listing of a new class of securities in substitution for a previously-listed class of securities, a business combination described in IM-5101-2, a change in the obligor of a listed debt security, or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights.”

⁷ See Notice, supra note 3, at 51376.

⁸ See Nasdaq FAQs-Listings #317, available at https://listingcenter.nasdaq.com/Material_search.aspx?materials=317&mc=LQ&criteria=2&cid=120%2C1%2C145%2C108%2C157%2C14%2C22%2C126%2C142%2C29%2C107%2C34%2C37%2C38%2C45%2C16%2C110%2C52%2C71%2C156%2C69%0A%0A. Nasdaq states that these announcements are published as Equity Corporate Action Alerts on <https://www.nasdaqtrader.com/> (the “Nasdaq Trader website”) on the day prior to the reverse stock split. See Notice, supra note 3, at 51377, n.7. See also *infra* note 12.

Accordingly, Nasdaq proposes to amend its rules to require a company conducting a reverse stock split to notify Nasdaq about certain details of the reverse stock split no later than 12 p.m. ET five business days prior to the anticipated market effective date, and to expressly require in its rules a company to make public disclosure about the reverse stock split at least two business days (no later than 12:00 p.m. ET) prior to the anticipated market effective date.⁹ Specifically, Nasdaq proposes to add new Rules 5250(b)(4), 5250(e)(7), and IM-5250-3, as discussed in more detail below, as well as update the information that a company must disclose about a reverse stock split to the Exchange on the Company Event Notification Form.¹⁰ Nasdaq also proposes to amend Rule 5250(b)(1) concerning disclosure of material information to specify that a company should refer to Rules 5250(b)(4) and 5250(e)(7) for the disclosure and notification requirements related to reverse stock splits.¹¹

Proposed Nasdaq Rule 5250(b)(4) will specify that a company must provide public notice about a reverse stock split using a Regulation FD compliant method no later than 12:00 p.m. ET at least two business days prior to the proposed market effective date.¹² In addition, the company shall, prior to the release of this information, provide notice of such disclosure to Nasdaq's

⁹ For example, Nasdaq states that if a company desires to effect a reverse stock split with a market effective date of Monday, July 24, the company would have to provide Nasdaq with a draft of the disclosure required by proposed Nasdaq Rule 5250(b)(4) and a complete Company Event Notification Form by 12:00 p.m. ET on Monday, July 17, and provide the public disclosure by 12:00 p.m. ET by Thursday, July 20 (assuming there are no holidays during these dates). See id. at 51376, n.5.

¹⁰ Nasdaq also proposes to delete the existing reference to a reverse stock split in Nasdaq Rule 5005(a)(44) that currently defines a "Substitution Listing Event" to include a reverse stock split. See supra note 6 and accompanying text.

¹¹ Nasdaq also proposes clarifying edits in Nasdaq Rule 5250(b)(1) to specify that the time deadlines refer to Eastern Time.

¹² Currently, the Nasdaq Trader website announcement and the company's press release are published the day prior to a reverse split, and includes material information such as the CUSIP number and split ratio. Nasdaq states that if a market participant inadvertently misses the announcement, they may continue to accept orders at the pre-split price, rather than the post-split adjusted price, which could lead to volatility in the stock price and trading inaccurate share amounts. See id. at 51378. Accordingly, proposed Nasdaq Rule 5250(b)(4) would provide market participants with at least one additional business day to review the company's public disclosure about the reverse stock split and update their systems. See id.

MarketWatch Department, at least ten minutes prior to public announcement if the public release of the material information is made between 7:00 a.m. to 8:00 p.m. ET.¹³ If the public release of this information is made outside the hours of 7:00 a.m. to 8:00 p.m. ET, Nasdaq companies must notify MarketWatch of the material information prior to 6:50 a.m. ET.¹⁴ The prior notice of this disclosure must be made to the MarketWatch Department through the electronic disclosure submission system available at <https://www.nasdaq.net>, except in emergency situations, when notification may instead be provided by telephone or facsimile.¹⁵

Proposed Nasdaq Rule 5250(e)(7) will specify that, for a reverse stock split, the company must notify Nasdaq by submitting a complete Company Event Notification Form¹⁶ no later than 12:00 p.m. ET five business days prior to the proposed market effective date. The submission must include all information required by the form and a draft of the disclosure required by proposed Nasdaq Rule 5250(b)(4).¹⁷ Nasdaq will not process a reverse stock split unless the requirements set forth in proposed Rules 5250(b)(4) and 5250(e)(7) have been timely satisfied.¹⁸

¹³ See proposed Nasdaq Rule 5250(b)(4). The timing for notifying Nasdaq about disclosure of material news before the public announcement of a reverse stock split in the proposed rule mirrors the timing for notifying Nasdaq's MarketWatch Department about the disclosure of other material news in current Nasdaq Rule 5250(b)(1).

¹⁴ See id.

¹⁵ See id. See also IM-5250-1, which states that examples of an emergency situation include: lack of computer or internet access; technical problems on either the company or Nasdaq system or an incompatibility between those systems; and a material development such that no draft disclosure document exists, but immediate notification to MarketWatch is important based on the material event.

¹⁶ Nasdaq filed the text of the proposed Company Event Notification Form ("Form") as Exhibit 3 to Nasdaq's rule filing. See Notice, supra note 3, at 51377, n.9. The proposed Company Event Notification Form to be used for reverse mergers is being modified, in conjunction with the rule changes being approved in this order, to require a company to provide additional information to Nasdaq on the reverse merger than is currently required in the Company Event Notification Form. See Exhibit 3 to Nasdaq's rule filing. The Form will indicate the requirements for the company's notification to the Exchange and public under the newly adopted rules herein as well as require the company to provide information including: (1) split ratio; (2) new CUSIP number; (3) dates of board approval, shareholder approval, and DTC eligibility; and (4) the effective date of the reverse stock split.

¹⁷ See proposed Nasdaq Rule 5250(e)(7).

¹⁸ See id.

Additionally, if a company takes legal action to effect a reverse stock split notwithstanding its failure to timely satisfy these requirements, or provides incomplete or inaccurate information about the timing or ratio of the reverse stock split in its public disclosure,¹⁹ Nasdaq will halt the stock in accordance with the procedure set forth in Nasdaq Equity 4, Rule 4120, that provides Nasdaq with the authority to halt trading to permit the dissemination of material news.²⁰

Proposed Nasdaq IM-5250-3 repeats the requirements of both proposed Nasdaq Rules 5250(b)(4) and (e)(7). According to Nasdaq this will provide issuers and market participants with additional transparency by having all information related to the reverse split process in one location in the Nasdaq rulebook.²¹

Nasdaq believes the proposed amendments will provide additional transparency and clarity to companies and market participants by specifying the notification and disclosure requirements related to reverse stock splits.²² Nasdaq states that the requirement for companies to submit a completed Company Event Notification Form no later than 12:00 p.m. ET five business days prior to the market effective date will help ensure that Nasdaq has timely and complete information to process the reverse stock split prior to the effective date.²³ Nasdaq also states that by shortening the deadline for the notification from 15 calendar days to five business days, Nasdaq believes that companies will be able to provide complete information in a single

¹⁹ For example, Nasdaq states that it will not process a proposed reverse stock split if the Company Event Notification Form does not include the new CUSIP number or a split ratio if the press release contains a split ratio or market effective date that is inconsistent with the draft submission previously provided to Nasdaq. See Notice, supra note 3, at 51377, n.12.

²⁰ See proposed Nasdaq Rule 4120(a)(1) and 5250(e)(7). Nasdaq has submitted a separate rule filing to adopt a new regulatory halt procedure specific to the pre-market trading and opening of a Nasdaq-listed security undergoing a reverse stock split. See Securities Exchange Act Release No. 98489 (September 22, 2023), 88 FR 66913 (September 28, 2023) (Notice of Filing of Proposed Rule Change to Amend Rule 4120 and Rule 4753).

²¹ See id. at 51377.

²² See id.

²³ See id.

submission of the form, which they often cannot do today.²⁴ As such, Nasdaq states the shorter time frame will simplify a company's ability to submit a completed Company Event Notification Form because all relevant information can be provided in one submission closer to the market effective date and thereby improve Nasdaq's processing of the forms and reduce the possibility of errors to the forms.²⁵ Additionally, Nasdaq states the requirement under proposed Nasdaq Rule 5250(e)(7) for companies to submit a draft of the Regulation FD disclosure required by proposed Rule 5250(b)(4) will help ensure that the information disseminated to the market by the company aligns with Nasdaq's announcement, including the split ratio and market effective date.²⁶ Nasdaq also states that it would publish an announcement through the Nasdaq Trader website one and two business days prior to the market effective date.²⁷ Furthermore, Nasdaq states that the requirement under proposed Nasdaq Rule 5250(b)(4) for a company to make public disclosure about a reverse stock split no later than 12:00 p.m. ET two business days prior to the market effective date will help ensure that sufficient notice is provided to market participants, thereby allowing them to process the event in their systems.²⁸

²⁴ See id. For example, Nasdaq states that currently some companies may submit a form without CUSIP information, and then will email the CUSIP information to Nasdaq a few days later. See id. Additionally, some companies may not have received confirmation of DTC eligibility, and receive it closer to the market effective date of the reverse stock split. See id. Nasdaq also indicated that where a company is conducting a reverse stock split to demonstrate compliance with the minimum \$1 bid price requirement, as many companies are doing to remain on Nasdaq's Capital Market tier, as described above in note 5, supra, the company may need to modify the ratio of the reverse stock split after providing initial notice due to changes in market conditions and the company's stock price. See id.

²⁵ See id. Nasdaq represents that the five business day timeframe still provides sufficient time for Nasdaq to process the notification. See id. at 51377, n.13.

²⁶ See id. at 51377.

²⁷ See id. at 51378. Nasdaq states that a company may publish a press release earlier than two business days prior to the market effective date of the reverse stock split. See id. at 51377, n. 15. However, Nasdaq states that it will only publish an announcement through the Nasdaq Trader website one and two business days prior to the reverse stock split. See id. As an example, Nasdaq states that if a company publishes a press release on Monday announcing a reverse stock split with a market effective date on Friday, Nasdaq will only publish an announcement through the Nasdaq Trader website on Wednesday and Thursday. See id.

²⁸ See id. See also supra note 12.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,³⁰ which requires, among other things, that a national securities exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As noted above, current Nasdaq Rule 5250(b)(1) requires a company to make “prompt disclosure” of “any material information that would reasonably be expected to affect the value of its securities or influence investors’ decisions,” which Nasdaq interprets to include details on reverse stock splits.³¹ In light of recent increased volume in reverse stock split activity, Nasdaq proposes to expressly set forth new notification and disclosure requirements for reverse stock splits in Nasdaq Rules 5250(b)(4), 5250(e)(7), and IM-5250-3.³² The Exchange’s proposal is reasonably designed to address this recent market activity, including for companies that are listed on the Nasdaq Capital Market tier, by providing additional transparency of reverse stock splits to

²⁹ 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁰ 15 U.S.C. 78f(b)(5).

³¹ See supra notes 7 and 8.

³² See supra notes 10 and 11 and accompanying text.

investors through public disclosure of material information about such splits,³³ thus allowing them to better manage investment decisions.

Further, the Exchange has represented that the requirement for companies to submit a completed Company Event Notification Form no later than 12:00 p.m. ET five business days prior to the market effective date will help ensure that Nasdaq has timely, complete, and accurate information to process the reverse stock split prior to the effective date.³⁴ While Nasdaq currently is required to receive notification and certain information about a reverse stock split no later than 15 calendar days before it is scheduled to occur, Nasdaq has represented in its proposal that this longer time frame creates issues because some of the terms of the reverse stock split may not be set or available at that time or may change before the reverse stock split is to occur. As Nasdaq has stated, shortening the timeframe for notifying the Exchange about a reverse stock split to five business days should help to reduce the possibility of errors and allow companies to provide more complete and accurate information about a reverse stock split in a single submission to Nasdaq. This can also inure to the benefit of investors by ultimately providing the marketplace with improved and timely information about a reverse stock split.

The Commission also believes that the other changes in proposed Nasdaq Rule 5250(e)(7) and to the Company Notification Form appear to be reasonable additions to address Nasdaq's and market participants' concerns about having adequate, accurate, and complete information in a timely manner about reverse stock splits. As described above, these changes include, among others, requiring companies to submit a draft of its public disclosure of the reverse stock split no later than 12 p.m. ET five business days prior to the market effective date so that the Exchange can ensure the disclosure aligns with the announcement Nasdaq will be

³³ See supra note 16.

³⁴ See supra note 23.

making, including on the split ratio and effective date of the reverse split. In addition, as described above, new Nasdaq Rule 5250(e)(7) will specifically indicate that in certain circumstances such as when a company takes action to effect a reverse stock split but has failed to satisfy the rule's requirements or a company provides incomplete or inaccurate information about the timing or ratio of the reverse stock split in its public disclosure, Nasdaq will halt the trading in the stock in accordance with its provisions on material news halts in Equity Rule 4, Rule 4120(a)(1).

The proposal will also provide the investing public and other market participants with at least one additional business day of public notice to help reduce the risk that investors and brokers inadvertently miss the public announcement of the reverse stock split or fail to process the event in their systems, helping to maintain fair and orderly markets, and protecting investors and the public interest.³⁵

The Commission also finds that the other changes in proposed Nasdaq Rule 5250(b)(1) and the addition of Nasdaq Rule 5250(b)(4) and IM-5250-3 will enhance the transparency of the reverse stock split disclosure process to issuers and investors. Finally, the Commission notes that the two comment letters received on the proposal were supportive.³⁶

³⁵ See supra note 12 (noting concerns about market volatility in stock prices if a market participant misses the current one business day announcement and continues to accept orders at pre-split prices and trading inaccurate share amounts). The Exchange also state that it believes the changes to both the notification and disclosure requirements should help to address these concerns about trading volatility and potential price mistakes. See Notice, supra note 3, at 51378. See also proposed Nasdaq Rule 5250(b)(4).

³⁶ See Virtu Letter, supra note 3 (stating that, among other things, (i) shortening the notice requirement to Nasdaq from 15 calendar days to five business days before the planned reverse stock split would “provide issuers with additional time to obtain more complete data and thorough information before reporting the planned corporate action to Nasdaq,” and “result in Nasdaq having more complete information in advance of the planned reverse split date to ensure that all of the technical requirements have been satisfied”; and (ii) increasing the public notice requirement to two business days “will enable market participants to plan more effectively for a reverse stock split, which will contribute to the maintenance of fair, orderly, and efficient markets”); Robinhood Letter, supra note 3 (expressing general support for the proposal and, in particular, the requirement to increase the public notice requirement to two business days).

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act³⁷ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁸ that the proposed rule change (SR-NASDAQ-2023-025), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

Sherry R. Haywood,

Assistant Secretary.

³⁷ 15 U.S.C. 78f(b)(5).

³⁸ 15 U.S.C. 78s(b)(2).

³⁹ 17 CFR 200.30-3(a)(12).