

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98878; File No. SR-NASDAQ-2023-036)

November 7, 2023

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Nasdaq Rules 4120 and 4753

I. Introduction

On September 12, 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 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 proposed rule change was published for comment in the Federal Register on September 28, 2023.³

On October 27, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.⁴ The Commission has received no comments on the proposal.

The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98489 (Sept. 22, 2023), 88 FR 66913 (Sept. 28, 2023) (SR-NASDAQ-2023-036) (“Notice”).

⁴ In Amendment No. 1, the Exchange makes non-substantive clarifying changes and provides additional justification for the proposal. Amendment No. 1 to the proposed rule change is available at <https://www.sec.gov/comments/sr-nasdaq-2023-036/srnasdaq2023036-283339-691882.pdf>.

II. Self-Regulatory Organization’s Description of the Proposal, as Modified by Amendment No. 1

In its filing with the Commission, the self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the 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.⁵ Current Rule 4120 does not specifically list rule reverse stock splits in the enumerated 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

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).

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.⁶

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. ET in the pre-market hours (i.e., the trading session between 4:00 a.m. to 9:30 a.m. ET) 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.⁷ 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 trading halt, which would prohibit pre-market trading immediately after a reverse stock split and open trading in such securities

⁶ 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.

⁷ 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).

using the Nasdaq Halt Cross 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 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 Hours⁸ 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 Market⁹ 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 in the security

⁸ 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).

⁹ Primary Listing Market is defined in Section X.A.8 of 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 ("UTP Plan") as "the national securities exchange on which an Eligible Security is listed. If an Eligible Security is listed on more than one national securities exchange, Primary Listing Market means the exchange on which the security has been listed the longest."

becomes effective,¹⁰ and resume trading at 9:00 a.m. on the day the split is effective.¹¹ Nasdaq believes that this halt and delayed opening¹² will give sufficient time for investors to review their orders and the quotes for the security and allow market participants to ensure that their systems have properly adjusted for the reverse stock split. Once post-market trading closes at 8:00 p.m. all orders for a halted security will be cancelled.

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.¹³ Specifically, the proposal is consistent with Section 6(b)(5) of the Act¹⁴ because it would promote just and equitable

¹⁰ 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. While the Exchange does not anticipate halting a security that undergoes a reverse stock split sooner than 7:50 p.m., the Exchange may halt trading sooner than 7:50 p.m. for other reasons as described in Nasdaq Equity 4, Section 4120. Nasdaq will provide notice of the halt through NasdaqTrader.com available at, <https://www.nasdaqtrader.com/Trader.aspx?id=TradeHalts>.

¹¹ 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 UTP Plan. Nasdaq will provide notice of the re-opening of the security through NasdaqTrader.com available at, <https://www.nasdaqtrader.com/Trader.aspx?id=TradeHalts>.

¹² Trading in a security that has undergone a reverse stock split will have a delayed opening because following the reverse stock split, the security will not re-open until the end of pre-market trading. Orders that have been entered for execution prior to the opening cross would be able to execute in the halt cross at 9:00 a.m.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

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 for which Nasdaq is the Primary Listing Market that is 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 authority to act in situations where it is necessary to maintain fair and orderly markets, such as when a security is subject to a reverse stock split and companies have not updated their system to account for the new stock price. The Exchange also believes that it is reasonable and appropriate to use the Nasdaq Halt Cross process under Rule 4753 to re-open trading in a security that has been halted due to a reverse stock split because it is consistent with the process that is typically used by Nasdaq when reopening a security that has been halted under Rule 4120. 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 preemptively declare a trading halt in a security undergoing a significant corporate action that could lead to investor or 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 whether to declare a trading halt in a security that is subject to 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 halt prior to the end of Post-Market Hours on the day immediately before the market effective date of a reverse stock

split. Nasdaq also believes it is appropriate to re-open the security at 9:00 a.m. because it gives the Exchange an opportunity to review its order book and root out any orders in a security that has undergone a reverse stock split, that have not correctly adjusted to the security's new stock price. The proposed changes seek to achieve consistency with respect to the initiation and termination of a trading halt with respect to securities that are subject to 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 are subject to a reverse stock split and resuming trading thereafter promotes fair and orderly markets and the protection of investors, because it allows Nasdaq to protect the broader interests of the national market system and addresses potential concerns that system errors may affect immediate trading in those securities. Nasdaq believes that given the increase in companies effecting reverse stock splits, the proposed trading halt rules will help Nasdaq 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. Additionally, resuming trading at 9:00 a.m. also promotes fair and orderly markets and the protection of investors by allowing time to remove any orders that have not adjusted for the security's new reverse stock split price.

Based on the foregoing, the Exchange believes that the proposed rules are consistent with Section 6(b)(5) of the Act¹⁵ 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 are subject to a reverse stock split, and allow market participants to ensure that their systems have

¹⁵ 15 U.S.C. 78f(b)(5).

properly accounted for the reverse stock split. As discussed previously, the Exchange believes that the proposed amendments establishing the authority and 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. Discussion and Commission Findings

The Commission is approving the proposed rule change, as modified by Amendment No. 1, for the reasons discussed below.¹⁶ The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, including Section 6(b)(5) of the Exchange Act,¹⁷ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As noted above, the proposal, as modified by Amendment No.1, would extend the Exchange's non-discretionary authority to declare a regulatory halt to cases where a security for which Nasdaq is the Primary Listing Market¹⁸ is undergoing a reverse stock split.¹⁹ As proposed, the Exchange will declare a regulatory halt²⁰ for which Nasdaq is the Primary Listing Market before the end of Post-Market Hours²¹ on the day immediately before the market effective date

¹⁶ In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ See supra, note 9 and accompanying text (defining the term "Primary Listing Market").

¹⁹ Current Nasdaq Rule 4120 does not include reverse stock splits in the enumerated circumstances in which Nasdaq may halt trading in a security. See supra, Section II.

²⁰ See supra, note 10 (discussing notice of the regulatory halt to market participants).

²¹ See supra, note 8 and accompanying text (defining the term "Post-Market Hours"). The Exchange represents that, while it does not anticipate halting a security that is undergoing a reverse stock split sooner than 7:50 p. m. on the day immediately before the market effective date of the reverse stock split in the security, the Exchange may halt trading sooner than 7:50 p.m. for other reasons as described in Nasdaq Equity 4, Section 4120. See supra, note 10.

of the reverse stock split in the security.²² The Exchange also proposes to terminate the regulatory halt and resume trading²³ in the halted security using the Nasdaq Halt Cross procedure²⁴ in Nasdaq Rule 4753.²⁵

The Exchange represents that declaring a regulatory halt before the end of Post Market Hours on the day immediately before the market effective date of the reverse stock split in a security for which Nasdaq is the Primary Listing Market is appropriate because it would provide the Exchange with explicit, non-discretionary authority to declare a regulatory halt in cases where a security is undergoing a significant corporate action that could cause investor or market confusion, such as where a security for which Nasdaq is the Primary Listing Market is undergoing a reverse stock split.²⁶ The Exchange represents that the proposed regulatory halt and delayed²⁷ reopening of the security subject to a reverse stock split using the Nasdaq Halt Cross²⁸

²² See proposed Nasdaq Rule 4120(a)(14). The Exchange represents that once post-market trading closes at 8:00 p.m. all orders for the halted security will be cancelled. See supra, Section II.

²³ See supra, note 11 (discussing notice of termination of the regulatory halt to market participants). The Exchange represents that 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. See supra, note 11.

²⁴ See supra, note 5 and accompanying text (discussing the Nasdaq Halt Cross).

²⁵ See proposed Nasdaq Rule 4753(b). The Exchange also proposes to modify Rule 4120(c)(7)(A) to include the non-discretionary regulatory halt authority proposed in Rule 4120(a)(14) in the reopening process currently applicable to trading halts under Rules 4120(a)(1), (4), (5), (6), (9), (10) and (11). See supra, Section II.

²⁶ The Exchange represents that none of the provisions in Nasdaq Rule 4120 currently provide the Exchange with authority to declare a trading halt under such circumstances. See supra, Section II.

²⁷ See supra, note 12 and accompanying text (discussing the proposed delayed opening for a Nasdaq-listed security undergoing a reverse stock split).

²⁸ See supra, note 5 and accompanying text.

procedure under Nasdaq Rule 4753 would provide Nasdaq²⁹ and market participants³⁰ with the time necessary to adjust for, as well as detect and correct order entry or other system errors associated with, the reverse stock split, thus preventing such errors from disrupting or otherwise having a material effect on the market.³¹ The Exchange further represents that using the Nasdaq Halt Cross process under Nasdaq Rule 4753 for terminating the proposed halt and resuming trading on the security is consistent with the process used for other securities halted under Nasdaq Rule 4120.³²

The Commission finds that the proposed rule change is reasonably designed to 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 by providing greater transparency and certainty with respect to the manner in which trading in a security for which Nasdaq is the Primary Listing Market will be halted due to a reverse stock split in the security, as well as the process through which the regulatory halt for the security will be implemented and terminated. The Commission also finds the proposal is reasonably designed to promote fair and orderly trading on the Exchange by reducing the potential for order entry or other system-related

²⁹ The Exchange represents that it currently processes reverse stock splits overnight, with the security undergoing a reverse stock split opening for trading at 4:00 a.m. ET in the pre-market hours (i.e., the trading session between 4:00 a.m. to 9:30 a.m. ET) on a split-adjusted basis. The Exchange further represents that it is appropriate to re-open the security at 9:00 a.m. using the Nasdaq Halt Cross process, as proposed, because it gives the Exchange an opportunity to review its order book and root out any orders for a security that has undergone a reverse stock split that have not correctly adjusted to the security's new stock price. See supra, Section II.

³⁰ The Exchange represents that market participants have expressed concerns with allowing trading on an adjusted basis at 4:00 a.m. because system errors or problems with orders may go unnoticed for some time when a security that has undergone a reverse stock split opens for trading together with all other securities. The Exchange represents that in 2022, Nasdaq processed 196 reverse stock splits, compared to 35 in 2021 and 98 in 2020, and that in the first quarter of 2023, Nasdaq processed 78 reverse stock splits, with significantly more projected throughout 2023. See supra, Section II.

³¹ See supra, Section II.

³² See supra, Section II.

errors associated with a reverse stock split in a security for which Nasdaq is the Primary Listing Market. Finally, the Commission finds that using the Nasdaq Halt Cross process under Rule 4753 to terminate the proposed regulatory halt and reopen the security, as proposed, raises no novel regulatory issues, as it is consistent with the process generally used by Nasdaq to terminate a trading halt and reopen trading in a security halted for other reasons under Nasdaq Rule 4120.

For the forgoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 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*].

V. Accelerated Approval of Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the Federal Register. As noted above, Amendment No. 1 makes non-substantive clarifying changes and provides additional justification for the proposed rule change.³³ The Commission finds that Amendment No. 1 provides greater clarity to and justification for the proposal but does not materially alter the substance of the proposed rule change. These changes raise no novel issues and assist the Commission in finding that the proposal is consistent with the Act. Accordingly, the Commission finds good cause, pursuant to

³³ See supra, note 4.

Section 19(b)(2) of the Act,³⁴ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁵ that the proposed rule change (SR-NASDAQ-2023-036), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Sherry R. Haywood,

Assistant Secretary.

³⁴ 15 U.S.C. 78s(b)(2).

³⁵ 15 U.S.C. 78s(b)(2).

³⁶ 17 CFR 200.30-3(a)(12).