SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101520; File No. SR-NASDAQ-2024-064)

November 6, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Anti-internalization Functionality in Equity 4, Rule 4757

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 October 25, 2024, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, 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 the Exchange's anti-internalization functionality in Equity 4, Rule 4757.

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 in

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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

The Exchange proposes to amend Equity 4, Rule 4757(a)(4) to offer increased functionality as it relates to anti-internalization. Specifically, the Exchange proposes to (i) allow participants that directly submit orders to the System as Members on the Exchange and submit orders to the System through Sponsored Access[3] as a Sponsored Participant, to direct that quotes/orders entered into the System directly as a Member not execute against quotes/orders submitted as a Sponsored Participant; (ii) specify when anti-internalization will activate; (iii) introduce an anti-internalization strategy that uses the strategy of the removing order; and (v) make other clarifying changes.

Affiliate Anti-Internalization

Currently, Equity 4, Rule 4757(a)(4) provides that market participants may direct that quotes/orders entered into the System not execute against either quotes/orders entered under the same MPID ("MPID Level AIQ") or quotes/orders entered across MPIDs under Common Ownership ("Organization Level AIQ").[4] In addition, market participants using the OUCH order entry protocol may assign to orders entered through a specific order entry port a unique group identification modifier that will prevent quotes/orders with such modifier from executing against each other. Anti-internalization or self-match prevention functionality assists participants in

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3 See General 2, Section 22(a). Sponsored Access shall mean an arrangement whereby a member permits its customers to enter orders into the System that bypass the member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third party technology provider.

4 For purposes of Equity 4, Rule 4757, the term "Common Ownership" shall mean participants under 75% common ownership or control.

reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm.

The Exchange proposes to enhance its current self-match prevention functionality to allow participants that demonstrate (i) membership on the Exchange through which they directly submit orders to the System and (ii) participation as a Sponsored Participant whereby they submit orders to the System through Sponsored Access, to direct that quotes/orders entered into the System directly as a Member not execute against quotes/orders submitted as a Sponsored Participant ("Affiliate Level AIQ").[5] The proposed enhancement would be in addition to the other levels of self-match prevention offered today. Under the proposed rule change, the anti-internalization functionality would continue to be an optional feature. If a firm chooses to take advantage of self-match prevention, the firm would need to opt-in to the self-match prevention functionality, as is the case today.

The purpose of this proposed change is to extend self-match prevention functionality to prevent transactions between a firm's orders submitted directly to the System and through Sponsored Access. There are situations where an individual firm would choose to submit orders to the Exchange through different mechanisms. For instance, a firm may employ different trading strategies across different trading desks and choose to send orders for one strategy to the Exchange through a direct connection while the other strategy is sent through Sponsored Access. The proposed functionality would serve as an additional tool that participants may enable in order to assist with compliance with the various securities laws relating to potentially

[5] The Exchange will require firms requesting to use Affiliate Level AIQ to complete an affidavit stating: (i) it is currently a Member of the Exchange that submits orders directly to the System, and (ii) it also submits orders to the System through a Sponsored Access arrangement.

manipulative trading activity such as wash sales[6] and self-trades.[7] Additionally, the proposed functionality would provide firms an additional solution to manage order flow by preventing undesirable executions where the firm submits orders in multiple formats (i.e., direct connection or Sponsored Access). As is the case with the existing risk tools, participants, and not the Exchange, have full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations. Furthermore, as is the case with the existing risk settings, the Exchange does not believe that the use of the proposed self-match prevention functionality can replace participant-managed risk management solutions.

Anti-Internalization Activation

The Exchange also proposes to provide that, unless participants designate otherwise, for anti-internalization to activate across orders, the orders must reflect the same anti-internalization level. For example, if an order has designated anti-internalization at an MPID level (i.e., quotes/orders entered into the System shall not execute against quotes/orders entered under the same MPID), anti-internalization will only activate against another order designated with anti-internalization at an MPID level.

This is a departure from how anti-internalization activates today. Currently, anti-internalization activates across orders with different anti-internalization levels. For example, a resting order with MPID Level AIQ can have anti-internalization activated against it if an

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6 A "wash sale" is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. See, e.g., 15 U.S.C 78i(a)(1); FINRA Rule 6140(b) ("Other Trading Practices").

7 Self-trades are "transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security." FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. See FINRA Rule 5210, Supplementary Material .02.

incoming order with Organization Level AIQ has the same Organization ID as the resting order. With the introduction of Affiliate Level AIQ, the anti-internalization levels must match across both orders for anti-internalization to be activated, in order to prevent erroneous activation of anti-internalization.[8] However, the Exchange proposes to preserve current functionality by providing participants with the option to elect to have anti-internalization activated against any anti-internalization level.

"Use Remover" Strategy

The Exchange currently provides three versions of self-match prevention functionality to allow participants to choose how orders are handled in the event of a self-match situation: (1) decrement, (2) cancel oldest, and (3) cancel newest. Under the first version ("decrement"), if the self-match orders have the same share size, both orders will cancel back to the customer. If the orders are not equivalent in size, the smaller order will cancel back to the originating customer and the larger order will decrement by the size of the smaller order. The remaining shares of the larger order will remain on the book. Under the second version ("cancel oldest"), the full size of the order residing on the book will cancel back to the customer if the incoming order would execute against it. The incoming order will remain intact with no changes. Under the third version ("cancel newest"), the full size of the order coming into the book will cancel back to the customer. The resting order will remain intact with no changes.

The Exchange proposes to add a new strategy ("use remover"), which would allow for a resting order to use the strategy of the removing order. If the use remover strategy is on an

[8] For example, assume Firm 1 accesses the Exchange directly and as a Sponsored Participant via Firm 2. Assume Firm 1 sends an order as a Sponsored Participant through Firm 2 with Affiliate Level AIQ enabled. Assume Firm 2 then sends an order unrelated to Firm 1 with Organization Level AIQ. If the current behavior prevailed, anti-internalization would activate and the orders would not execute, resulting in an undesirable outcome.

order, it will only have anti-internalization activated against it when it is the resting order and will never trigger anti-internalization against another order when it is the incoming order. The Exchange proposes to introduce the "use remover" strategy in order to maintain existing anti-internalization functionality that would otherwise become obsolete with the introduction of the default requirement for anti-internalization activation (i.e., the orders must reflect the same anti-internalization level). As described above, currently, anti-internalization activates across orders with different anti-internalization levels. Currently, resting orders that have anti-internalization disabled are still subject to anti-internalization functionality, based on the anti-internalization selection of the incoming orders. For example, currently, if Firm 1 sends an order with anti-internalization disabled and then Firm 2 sends an order with Organization Level AIQ with a decrement strategy, anti-internalization would activate between the two orders based on the incoming order's strategy because of the Organization Level AIQ. Assuming the Firm does not designate that anti-internalization activate across quotes/orders, the aforementioned example would no longer occur because Affiliate Level AIQ necessitates matching anti-internalization levels. The Exchange wishes to maintain such functionality as an option for participants and introduction of the use remover strategy would allow participants to choose to have a resting order use the anti-internalization strategy of the removing order.

Taken together, the Exchange believes that the proposed anti-internalization enhancements would provide participants with more tailored self-trade functionality that allows them to manage their trading as appropriate based on the participant's business needs.

Clarifying Changes

Lastly, the Exchange proposes to make several clarifying changes to Equity 4, Rule 4757(a)(4) to promote clarity.

First, the Exchange proposes to codify which strategy prevails when anti-internalization strategies differ between two orders. Specifically, the Exchange proposes to provide that, when anti-internalization strategies differ between two orders, the strategy of the order removing liquidity will apply and the strategy of the resting order will be ignored. This is consistent with current Exchange and industry practice.

In addition, the Exchange proposes to modify the text introducing the various anti-internalization strategies to state that, "In each anti-internalization case, as described in this paragraph (4), a market participant may elect from the following strategies", to make it clear that any strategy may be selected for each anti-internalization level. Relatedly, the Exchange proposes to delete language stating that, "The foregoing options may be applied to all orders entered under the same MPID, across MPIDs under Common Ownership, or, in the case of market participants using the OUCH order entry protocol, may be applied to all orders entered through a specific order entry port." The Exchange believes that such language is redundant, as the modified introductory language makes it clear that the anti-internalization strategies may be applied to each anti-internalization level. Finally, the Exchange also proposes to add the names of the existing anti-internalization strategies (i.e., Decrement, Cancel Oldest, and Cancel Newest) before the description of such strategies for clarity.

Implementation

The Exchange intends to introduce this new functionality by the first quarter of 2025. The Exchange will issue an Equities Trader Alert to provide notification of the change and relevant date prior to introducing the new functionality.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] 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 the proposed Affiliate Level AIQ functionality promotes just and equitable principles of trade by allowing individual firms to better manage order flow and prevent undesirable trading activity such as wash sales[11] or self-trades[12] that may occur as a result of the velocity of trading in today's high-speed marketplace. The proposed Affiliate Level AIQ functionality does not introduce novel functionality, as the proposed amendment extends the current anti-internalization functionality to another trading relationship. For instance, a participant may operate trading desk 1 that accesses the Exchange via the Member's direct connection, as well as trading desk 2 that accesses the Exchange as a Sponsored Participant. While these desks may operate different trading strategies, a participant may desire to prevent these desks from trading versus each other in the marketplace because the orders are originating from the same entity. Here, participants may desire anti-internalization functionality on an Affiliate Level AIQ that will help them achieve compliance[13] with regulatory rules regarding wash sales and self-trades in a very similar manner to the way that the current anti-internalization

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9 15 U.S.C. 78f(b).

10 15 U.S.C. 78f(b)(5).

11 Supra note 6.

12 Supra note 7.

13 The Exchange reminds participants that while they may utilize anti-internalization to help prevent potential transactions such as wash sales or self-trades, participants, not the Exchange, are ultimately responsible for ensuring that their orders comply with applicable rules, laws, and regulations.

functionality applies to existing anti-internalization levels. The proposed Affiliate Level AIQ functionality will also assist participants in reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm.

The Exchange believes that the other proposed changes, including modifying the default procedure for activating anti-internalization while preserving the current functionality as an option for participants, adding the use remover strategy, and making clarifying changes, also promote just and equitable principles of trade by providing participants with more tailored self-trade functionality that allows them to manage their trading as appropriate based on the participant's business needs and providing clarity and transparency to the rules.

The Exchange also believes that the proposed rule change is fair and equitable and is not designed to permit unfair discrimination, in accordance with Section 6(b)(5) of the Act,[14] as use of the proposed Affiliate Level AIQ functionality and related features of the proposal are optional, and use is not a prerequisite for trading on the Exchange.

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 proposed rule change is designed to enhance self-match prevention functionality provided to the Exchange's participants and will benefit participants that wish to protect their quotes and orders entered into the System directly as a Member against trading with quotes/orders submitted as a Sponsored Participant. The new functionality is also completely voluntary, and members that wish to use the current functionality (or opt out altogether) can also continue to do so. The

[14] 15 U.S.C. 78f(b)(5).

Exchange does not believe that providing more flexibility to participants will have any significant impact on competition. In fact, the Exchange believes that the proposed rule change is evidence of the competitive environment where exchanges must continually improve their offerings to maintain competitive standing.

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 Act[15] and subparagraph (f)(6) of Rule 19b-4 thereunder.[16]

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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15 15 U.S.C. 78s(b)(3)(A)(iii).

16 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.

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-2024-064 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-2024-064. 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-2024-064 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.[17]

Sherry R. Haywood,

Assistant Secretary.

[17] 17 CFR 200.30-3(a)(12).