

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99974; File No. SR-NYSE-2024-22)

April 17, 2024

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 123D

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on April 11, 2024, New York Stock Exchange LLC (“NYSE” 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 123D (Halts in Trading) 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 is available on the Exchange’s website at www.nyse.com, 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 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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, the Exchange proposes to amend Rule 123D (Halts in Trading) to set forth specific requirements for halting and resuming trading in a security that is subject to a reverse stock split.

Background

The Commission recently approved a proposal filed by The Nasdaq Stock Exchange (“Nasdaq”) providing for a regulatory halt at the end of trading on the day immediately before the market effective date of a reverse stock split and a delayed opening of the security on the market effective date of the reverse stock split.⁴ In its filing, Nasdaq noted that it had observed a recent increase in reverse stock split activity in the current market environment.

The Exchange has not itself experienced the increase in the number of reverse stock splits that Nasdaq described in its filings. Nevertheless, the Exchange proposes to adopt similar changes at the request of market participants who say that they would benefit from a consistent approach across exchanges with respect to regulatory halt rules around reverse stock splits. The Exchange believes that harmonizing its rules with Nasdaq’s in this area would enhance investor protection and maintain fair and orderly markets by minimizing the chance that market participants might make erroneous trades in a security because they were unaware that it had undergone a reverse stock split.

⁴ See Securities Exchange Act Release No. 98878 (November 7, 2023) (SR-NASDAQ-2023-036) (approving halt provisions with respect to reverse stock splits).

Accordingly, the Exchange proposes to adopt amendments to its trading halt rules to require the Exchange to declare a regulatory halt in trading before the end of after-hours trading on the day immediately before the market effective date of a reverse stock split, and to open the security on the market effective date of a reverse stock split with a Trading Halt Auction⁵ starting at 9:30 a.m., at the start of the Exchange’s Core Trading Session.⁶ This proposed change is modeled on the recently-approved Nasdaq rule.

This change would help reduce the potential for market participants’ misunderstanding of the impact on the value of the issuer’ securities resulting from investors’ lack of advance knowledge of the reverse stock split, as well as 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.

Proposed Amendment to Rule 123D

The Exchange currently processes reverse stock splits overnight, with the security available for trading on other markets at 4:00 a.m.⁷ on a split-adjusted basis. Market participants have recently expressed concerns with allowing trading on an adjusted basis during those early trading sessions, 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. For example, problems in connection with

⁵ The term “Trading Halt Auction” is defined in Rule 7.35(a)(1)(B) as an auction “that reopens trading following a trading halt or pause.” The Trading Halt Auction would be effectuated by the security’s designated market maker (“DMM”) pursuant to Rule 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions). An Exchange-listed security that opens trading for the day with a Trading Halt Auction would not undergo a Core Open Auction (defined in Rule 7.35(a)(1)(A)).

⁶ The term “Core Trading Session” is defined in Rule 7.34(a)(2).

⁷ All times referred to in this filing are Eastern Time.

the processing of a reverse stock split could result in a broker executing trades selling more shares than customers held in their accounts, resulting in a temporary short position.

As such, the Exchange believes it is appropriate to impose a regulatory halt, which would prohibit pre-market trading immediately after a reverse stock split, and to re-open trading in such securities using a Trading Halt Auction. These changes would allow the Exchange 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.

The Exchange proposes to add new subparagraph (f) to Rule 123D, which would provide that the Exchange will halt trading in a security for which the Exchange is the Primary Listing Market⁸ before the end of post-market trading on other markets on the day immediately before the market effective date of a reverse stock split. Such a trading halt due to a reverse stock split would be mandatory pursuant to proposed Rule 123D(f). In general, the Exchange expects to initiate the halt at 7:50 p.m., prior to the end of post-market trading on other markets at 8:00 p.m. on the day immediately before the split is effective.⁹

⁸ The term “Primary Listing Market” is defined in Section XI(a)(i)(H) of the CTA 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 exchanges, Primary Listing Market means the exchange on which the security has been listed the longest.”

⁹ It is the Exchange’s policy not to halt a security after 4:00 p.m. in advance of a material news disclosure by a listed company, but the Exchange does implement regulatory halts after 4:00 p.m. when necessary for other reasons. In the case of a security undergoing a reverse stock split, initiating the halt at approximately 7:50 p.m. would provide the Exchange with a limited buffer to ensure that trading in a security that is undergoing a reverse stock split would not continue after the end 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 earlier than 7:50 p.m. for other reasons as described elsewhere in Rule 123D or Rule 7.18. The Exchange would provide notice of the halt through the SIP and on the Exchange’s trading halt web page at <https://www.nyse.com/trade-halt>.

Proposed Rule 123D(f) would further provide that trading in the security will resume with a Trading Halt Auction starting at 9:30 a.m.¹⁰ on the day the reverse stock split is effective.¹¹ The Exchange believes that this halt and delayed opening¹² would 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.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular,

¹⁰ The Exchange's affiliates NYSE American LLC ("NYSE American") and NYSE Arca, Inc. ("NYSE Arca") have each filed similar rule changes proposing to re-open a security subject to a reverse stock split trading halt with a Trading Halt Auction that would take place at 9:00 a.m., thirty minutes before the Core Trading Session would start. See SR-NYSEAMER-2024-24 and SR-NYSEARCA-2024-29. Both NYSE American and NYSE Arca have Early Trading Sessions, and thus the 9:00 a.m. Trading Halt Auction would take place while trading on those exchanges is already in progress. See NYSE American Rule 7.34E(a)(1) and NYSE Arca Rule 7.34-E(a)(1) (defining "Early Trading Session"). Because the Exchange does not have an early trading session for securities for which it is the Primary Listing Market, the Exchange instead proposes that a security subject to a reverse stock split trading halt would re-open with a Trading Halt Auction starting at 9:30 a.m., at the start of the Exchange's Core Trading Session. The Exchange believes that re-opening the security with a Trading Halt Auction starting at 9:30 a.m. would promote fair and orderly trading because it would provide market participants and the Exchange ample opportunity to notice errors or problems with orders for the security due to the reverse stock split. In addition, the Exchange believes that re-opening the security with a Trading Halt Auction starting at 9:30 a.m. (instead of at 9:00 a.m. as on NYSE American and NYSE Arca) would promote fair and orderly trading because it would follow the Exchange's usual opening process for securities that are re-opening at the start of the Core Trading Session after a regulatory halt. The Exchange believes that this approach is preferable to creating an entirely new trading session commencing at 9:00 a.m. solely for the re-opening of securities listed on the Exchange subject to a regulatory halt in advance of a reverse stock split, which the Exchange believes would cause confusion among market participants.

¹¹ The Exchange may change the resumption time if, for example, there was "Extraordinary Market Activity," as defined in the CTA Plan, that could interfere with a fair and orderly resumption at the start of Core Trading Hours. The Exchange will provide notice of the re-opening of the security through the SIP and on the Exchange's trading halt web page at <https://www.nyse.com/trade-halt>.

¹² Trading in a security that has undergone a reverse stock split would have a delayed opening because following the reverse stock split, the security would not be available for early-session trading at 4:00 a.m. on away markets, but would instead re-open with a Trading Halt Auction at the start of the Core Trading Session. Orders that have been entered for execution prior to the Trading Halt Auction and not canceled would be eligible to execute in the Trading Halt Auction.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

because it is 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 because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal removes impediments to and perfects the mechanism of a free and open market and a national market system and protects investors and the public interest. The Exchange is proposing these changes at the request of market participants who say that they would benefit from a consistent approach across exchanges with respect to regulatory halt rules around reverse stock splits. As such, the Exchange believes that harmonizing its rules with Nasdaq's in this area would enhance investor protection and maintain fair and orderly markets by minimizing the chance that market participants might make erroneous trades in a security because they were unaware that it had undergone a reverse stock split.

The Exchange believes that its proposed rule change establishing a reverse stock split trading halt rule would protect investors by giving the Exchange non-discretionary 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 systems to account for the new stock price. It would also ensure that the process for resuming trading following a reverse stock split halt is consistent with other types of halts initiated by the Exchange. Currently, none of the Exchange's rules provide authority to pre-emptively halt the trading in a security undergoing a significant corporate action that could lead to investor or

market confusion.

The Exchange believes that the proposed amendments would provide greater transparency and clarity with respect to the manner in which trading would be halted due to a reverse stock split, and the process through which that halt would be implemented and terminated. Particularly, the Exchange would not have discretion in determining whether to declare a trading halt in a security following the declaration of a reverse stock split. Rather, following the reverse stock split of a security for which the Exchange is the Primary Listing Market, trading in the security would halt prior to the close of the post-market trading session on other markets on the day immediately before the market effective date of the reverse stock split. The Exchange also believes it is appropriate to re-open the security with a Trading Halt Auction on the effective date of the reverse stock split because doing so would give the Exchange and market participants an opportunity to identify 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 have undergone a reverse stock split, while maintaining a fair and orderly market, protecting investors, and protecting the public interest.

Additionally, the Exchange believes that 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 allows the Exchange to protect the broader interests of the national market system and addresses potential concerns that system errors may affect immediate trading in those securities. The Exchange believes that given the increase in companies effecting reverse stock splits, the proposal would help the Exchange 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.

The Exchange further believes that re-opening a security subject to a reverse stock split with a Trading Halt Auction starting at 9:30 a.m. would promote fair and orderly trading because it would provide market participants and the Exchange ample opportunity to notice errors or problems with orders for the security due to the reverse stock split. In addition, the Exchange believes that re-opening the security with a Trading Halt Auction starting at 9:30 a.m. (instead of at 9:00 a.m. as on NYSE American and NYSE Arca)¹⁵ would promote fair and orderly trading because it would follow the Exchange's usual opening process for securities that are re-opening at the start of the Core Trading Session after a regulatory halt. The Exchange believes that this approach is preferable to creating an entirely new trading session commencing at 9:00 a.m. solely for the re-opening of securities listed on the Exchange subject to a regulatory halt in advance of a reverse stock split, which the Exchange believes would cause confusion among market participants.

Based on the foregoing, the Exchange believes that the proposal is consistent with the Act because it would promote just and equitable principles of trade and would 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 process for reverse stock split trading halts and the resumption of trading is consistent with the Act, which itself imposes obligations on exchanges

¹⁵ See supra note 10.

with respect to issuers that are listed.

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

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.¹⁶

The Exchange believes that 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. In addition, at least one other exchange (Nasdaq) has already adopted a substantially similar rule. The Exchange believes that harmonizing its rules with Nasdaq's in this area would minimize the chance that market participants might make erroneous trades in a security because they were unaware that it had undergone a reverse stock split.

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 on the Exchange equally. In addition, information regarding the timing of reverse stock splits and the halting and resumption of trading in connection with the effecting of reverse splits would be disseminated using several freely-accessible sources to ensure the broad availability of this information.

In addition, the proposal includes provisions related to the declaration and timing of trading halts and the resumption of trading that are designed to prevent any advantage to those who can react more quickly than other market participants.

¹⁶ 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹⁹

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)²⁰ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

²⁰ 15 U.S.C. 78s(b)(2)(B).

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-NYSE-2024-22 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-NYSE-2024-22. 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-NYSE-2024-22 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.²¹

Vanessa A. Countryman,

Secretary.

²¹ 17 CFR 200.30-3(a)(12).