

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96248; File No. SR-NASDAQ-2022-060)

November 7, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Specify an Implementation Timeframe for the Introduction of Enhanced Anti-Internalization Functionality

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 31, 2022, 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 and II, 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 specify an implementation timeframe for the introduction of enhanced anti-internalization functionality.

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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to specify an implementation timeframe for the introduction of enhanced anti-internalization functionality. The Exchange previously filed³ a rule change to enhance the anti-internalization functionality available on the Exchange by giving market participants the flexibility to choose to have this protection apply to market participants under Common Ownership.⁴

By way of background, anti-internalization, also known as self-match prevention, is an optional feature available on the Exchange that currently (1) prevents two orders with the same Market Participant Identifier (MPID) from executing against each other, or (2) prevents two orders entered through a specific order entry port from executing against each other (in the case of market participants using the OUCH order entry protocol). The enhanced anti-internalization functionality, as proposed in SR-NASDAQ-2022-056,⁵ would permit market participants to direct that quotes/orders entered into the System not execute against quotes/orders entered across MPIDs that are under Common Ownership.

The previous rule filing⁶ to enhance the anti-internalization functionality available on the Exchange did not specify an implementation date. The Exchange proposes to establish an implementation timeframe that extends beyond 30 days after the date of filing of SR-NASDAQ-

³ Securities Exchange Act Release No. 96069 (October 13, 2022), 87 FR 63558 (October 19, 2022).

⁴ The Exchange previously proposed to define “Common Ownership” under Equity 4, Rule 4757 to mean participants under 75% common ownership or control. See id.

⁵ Supra note 4.

⁶ Id.

2022-056.⁷ Specifically, the Exchange proposes to implement the enhanced anti-internalization functionality no later than the First Quarter of 2023. The delay would provide the Exchange additional time to develop and test this functionality. The Exchange will issue an Equities Trader Alert to provide notification of the change and relevant implementation 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,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ 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 change in anti-internalization functionality will enhance self-trade protections provided to market participants and the Exchange desires to rollout the anti-internalization functionality at a later date to allow sufficient time to develop and test this functionality. As proposed herein, the Exchange will offer the enhanced anti-internalization functionality no later than the First Quarter of 2023.

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 Exchange does not believe that the proposed rule change will impact the intense competition that exists in the equities markets. The Exchange does not believe that the proposed delay will

⁷ Id.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

impose any significant burden on inter-market competition as it does not impact the ability of other markets to offer or not offer competing functionality. The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition because all participants uniformly will not be able to take advantage of the enhanced anti-internalization functionality until it is implemented. The Exchange intends to offer the optional, enhanced anti-internalization functionality no later than the First Quarter of 2023.

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) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ the Commission may designate a shorter time if such action is consistent with the

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization 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.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. Waiver of the operative delay would allow the Exchange to extend the implementation timeframe of SR-NASDAQ-2022-056 prior to the scheduled effective date for SR-NASDAQ-2022-056, which is scheduled to become effective on November 5, 2022. The Exchange states that extending the implementation timeframe prior to the currently scheduled effective date will ensure that the Exchange's rules continue to properly reflect the delay of the enhanced anti-internalization functionality, which will not be available on the Exchange by the currently scheduled date. The Exchange further states that delaying the introduction of the enhanced anti-internalization functionality will provide additional time to develop and test this functionality. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹⁴

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 change should be approved or disapproved.

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2022-060 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-2022-060. This file number should be included on the subject line if e-mail 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 (<http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2022-060 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier

Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).