

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-96341; File No. SR-NASDAQ-2022-065)

November 17, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay Implementation of Pending Amendments to Equity 4, Rules 4120, 4702 and 4703

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 14, 2022, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (the “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 delay implementation of pending amendments to Equity 4, Rules 4120, 4702 and 4703<sup>3</sup> in light of planned changes to the System.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> References herein to Nasdaq Rules in the 4000 Series shall mean Rules in Nasdaq Equity 4.

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.

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

1. Purpose

On November 14, 2022, the Exchange plans introduce a new upgraded version of the OUCH Order entry protocol<sup>4</sup> that will, when fully implemented, enable the Exchange to make functional improvements to specific Order Types<sup>5</sup> and Order Attributes.<sup>6</sup> The Exchange filed its proposal (the “Proposal”) for these enhancements with the SEC on September 14, 2022, and in the Proposal the Exchange stated that its operative date would be November 14.<sup>7</sup> The Exchange recently issued a reminder of that operative date in an Equity Trader Alert.<sup>8</sup> The Exchange now

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<sup>4</sup> The OUCH Order entry protocol is a proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from members, and if there are matching Orders, they will execute. Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for members to send Orders and receive status updates on those Orders. See <https://www.nasdaqtrader.com/Trader.aspx?id=OUCH>.

<sup>5</sup> An “Order Type” is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to Nasdaq. See Equity 1, Section 1(a)(7).

<sup>6</sup> An “Order Attribute” is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. See *id.*

<sup>7</sup> See Securities Exchange Act Release No. 34-95768 (September 14, 2022); 87 FR 57534 (September 20, 2022) (SR-Nasdaq-2022-051).

<sup>8</sup> See Equity Trader Alert 2022-96 (October 26, 2022), available at

wishes to inform participants that while it intends to proceed with introducing technical upgrades to OUCH on November 14<sup>th</sup>, the functional upgrades affecting Order Types, Order Attributes, and Order Handling and trading behavior will not be available on that date.

By way of background, the functional enhancements to OUCH set forth in the Proposal will enable the Exchange to upgrade the logic and implementation of certain of its Order Types and Order Attributes so that the features are more robust, streamlined, and harmonized across the Exchange's Systems and Order entry protocols. The Exchange developed OUCH with simplicity in mind, and therefore, it presently lacks certain complex order handling capabilities. By contrast, the Exchange specifically designed its RASH Order Entry Protocol<sup>9</sup> to support advanced functionality, including discretion, random reserve, pegging and routing. The introduction of OUCH upgrades will enable participants to utilize OUCH, in addition to RASH, to enter Order Types that require advanced functionality. Thus, the upgrades will not introduce new functionality, but rather, it will offer to OUCH users advanced functionality that already exists for RASH users.

Specifically, the Proposal will amend Rule 4702 pertaining to Order Types to specify that, going forward, OUCH may be used to enter certain Order Types together with certain Order Attributes, whereas now, Rule 4702 specifies that RASH, FIX, and QIX, but not OUCH, may be used to enter such combinations of Order Types and Attributes.<sup>10</sup> The Proposal will also adjust

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<http://www.nasdaqtrader.com/TraderNews.aspx?id=%20ETA2022-96>.

<sup>9</sup> The RASH (Routing and Special Handling) Order entry protocol is a proprietary protocol that allows members to enter Orders, cancel existing Orders and receive executions. RASH allows participants to use advanced functionality, including discretion, random reserve, pegging and routing. See [http://nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/rash\\_sb.pdf](http://nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/rash_sb.pdf).

<sup>10</sup> The planned upgrades will enable members to utilize OUCH in additional circumstances,

the current functionality of the Pegging,<sup>11</sup> Reserve,<sup>12</sup> and Trade Now Order Attributes,<sup>13</sup> as described therein, so that they align with how OUCH, once upgraded, will handle these Order Attributes going forward.

Unfortunately, none of these new OUCH functionalities set forth in the Proposal will be available on November 14, 2022, and they may not be available for several months thereafter due to delays in completing the necessary development work. The Exchange still will make the new version of OUCH available for participant use on November 14th, as the Exchange will be in a position on that date to implement certain technical enhancements to the OUCH Protocol of value to participants. However, these technical enhancements will not affect existing Order Types, Order Attributes, or Order handling or trading behavior on the Exchange.

As such, the new Rules set forth in the Proposal will not be operational on November 14<sup>th</sup>. Instead, existing Rules governing Order Types, Order Attributes and Order handling and trading behavior on the Exchange will continue to apply as of November 14<sup>th</sup> and until such date as all of the functional upgrades to OUCH are complete and ready for implementation. The Exchange will announce the implementation date of the new OUCH functionalities, and of the new Rules set forth in the Proposal, in an Equity Trader Alert at least 30 days prior to implementation. A present, the Exchange expects that the new OUCH functionality will be

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including for the entry of: (1) Price to Comply and Price to Display Orders with the Reserve Size, Primary and Market Pegging, and Discretion Order Attributes; (2) Non-Displayed Orders with the Primary and Market Pegging, Midpoint Pegging (in scenarios described in amended Rule 4703(d)), and Discretion Order Attributes; and (3) Market Maker Peg Orders.

<sup>11</sup> See Rule 4703(d).

<sup>12</sup> See Rule 4703(h).

<sup>13</sup> See Rule 4703(m)-(n).

ready for full implementation in the second or third quarter of 2023, although that time frame is subject to change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> 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.

It is consistent with the Act to delay implementation of pending amendments to the Exchange's Rulebook relating to effectuate functional upgrades to OUCH because such functional upgrades will not be ready for implementation upon the launch of the new version of the OUCH protocol on November 14, 2022. The Exchange believes that it is in the best interests of investors and the public, and consistent with the maintenance of an orderly market, to avoid confusion by maintaining its current Rulebook governing OUCH until such time as the Exchange is ready to implement the new functionality.

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 will merely delay the implementation schedule for the Proposal as well as the Rules that will apply to participants and their Orders in the interim period.

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

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<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

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 prior to 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<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that a waiver of the operative delay is consistent with the protection of investors and the public interest because it allow the Exchange to avoid confusion that might otherwise arise on November 14, 2022, the date when the Proposal is currently scheduled to become operative, if the Exchange's Rulebook was to suggest to participants that OUCH Orders will behave in a manner that is not yet accurate. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>17</sup> 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, 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.

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)<sup>18</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2022-065 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-2022-065. 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 (<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

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<sup>18</sup> 15 U.S.C. 78s(b)(2)(B).

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-2022-065 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.<sup>19</sup>

Sherry R. Haywood,  
Assistant Secretary.

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<sup>19</sup> 17 CFR 200.30-3(a)(12), (59).