

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101693; File No. SR-NASDAQ-2024-068)

November 21, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Deadline for a Listed Company to Notify Nasdaq of a Reverse Stock Split

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 November 8, 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 modify its listing standards related to notification and disclosure of reverse stock splits to the Exchange. The proposed rule change will become operative on January 30, 2025.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 21, 2023, Nasdaq filed with the Commission a proposed rule change related to notification and disclosure of reverse stock splits.³ On November 1, 2023, the Commission approved the proposed rule changes.⁴ On March 1, 2024, Nasdaq adopted an additional change to the rule and Company Event Notification Form to further clarify the requirements.⁵ Nasdaq is now proposing to amend the deadline for a company to notify Nasdaq of a reverse stock split from 5 business days to 10 calendar days in order to conform to the requirements of SEC Rule 10b-17 of the Act.⁶

Specifically, Rule 10b-17(a)(2) and (b) of the Act, require issuers to provide notice to FINRA (formerly the National Association of Securities Dealers, Inc.) no later than 10 calendar days prior to the date of record to participate in a stock split or reverse stock split, unless the impacted security is traded on a national securities exchange with a substantially comparable requirement to those set forth in Rule 10b-17(b)(1).⁷

³ See Securities Exchange Act Release No. 98014 (July 28, 2023), 88 FR 51376 (August 3, 2023) (proposing SR-Nasdaq-2023-025).

⁴ See Securities Exchange Act Release No. 98843 (November 1, 2023), 88 FR 76867 (November 7, 2023) (approving SR-Nasdaq-2023-025).

⁵ See Securities Exchange Act Release No. 99734 (March 14, 2024), 89 FR 19905 (March 20, 2024).

⁶ 17 CFR § 240.10b-17.

⁷ 17 CFR § 240.10b-17(a)(2), (b)(1) and (b)(3).

Currently, Rule 5250(e)(7) and IM-5250-3 require a company conducting a reverse stock split to notify Nasdaq about certain details of the reverse stock split by submitting a complete Company Event Notification Form and a draft of the disclosure required by Rule 5250(b)(4) at least 5 business days (no later than 12:00 p.m. ET) prior to the anticipated market effective date, which includes all the information required by Rule 10b-17 applicable to reverse stock splits.

It has come to Nasdaq's attention that Nasdaq's current rule may not be considered substantially comparable to the 10 calendar-day prior notice required in Rule 10b-17 of the Act. Accordingly, Nasdaq is proposing to amend the deadline for a company to notify Nasdaq of a reverse stock split from no later than 12:00 p.m. ET 5 business days to 10 calendar days prior to the anticipated market effective date of the reverse stock split to ensure that Rule 5250(e)(7) and IM-5250-3 are substantially comparable to Rule 10b-17 and, therefore, that companies are compliant with Rule 10b-17 when they give notice under those rules.⁸ Nasdaq is not amending the requirement to provide public disclosure under Rule 5250(b)(4) at least 2 business days (no later than 12:00 p.m. ET) prior to the anticipated market effective date. Nasdaq still believes that this timeframe provides sufficient notice to the public about reverse stock splits.⁹

Nasdaq is also submitting an updated Company Event Notification Form as Exhibit 3 to the rule filing. Nasdaq is making conforming changes to the Form to reflect that the deadline for submission is 10 calendar days, rather than 5 business days.

⁸ For example, if a company desires to effect a reverse stock split with a market effective date of Monday, September 23, the company would have to provide Nasdaq with a draft of the disclosure required by proposed Rule 5250(b)(4) and a complete Company Event Notification Form by 12:00 p.m. ET on Friday, September 13, and provide the public disclosure by 12:00 p.m. ET by Thursday, September 19. Note that this example presumes that there are no holidays during these dates. If a company withdraws and re-submits a Company Event Notification Form, the 10 calendar day period would be measured from the date the company re-submitted the form (rather than the date of the first submission).

⁹ See supra note 3.

In order to provide companies that have already planned action for a reverse stock split under the current rule's timeframe with the ability to effect their reverse stock split under that schedule, the proposed rule change will become operative on January 30, 2025.¹⁰ Nasdaq believes that this delayed operative date will allow sufficient time for market participants to adjust to the new time frame. For example, a company may have already scheduled a shareholder meeting or submitted a preliminary or final proxy statement to the Commission with a view towards effecting a reverse stock split based on the currently required five-day notice period. Nasdaq believes this delayed operative date will reduce potential confusion for companies and investors about the transition and allow companies to appropriately plan for the change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² 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, by aligning its rules related to notification of reverse stock splits with the notification requirements of Rule 10b-17 of the Act.

The proposal amends Rule 5250(e)(7) and IM-5250-3 to require a company to submit a complete Company Event Notification Form and a draft of the disclosure required by Rule

¹⁰ For example, a company may have already scheduled a shareholder meeting or submitted a preliminary or final proxy statement to the Commission with a view towards effecting a reverse stock split during a compliance period under the Nasdaq Listing Rules. The additional time to provide 10 calendar days advance notice of the reverse stock split, instead of the currently required five business-day notice period, could prevent the company from regaining compliance during the compliance period.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

5250(b)(4) at least 10 calendar days (no later than 12:00 p.m. ET) prior to the anticipated market effective date, rather than 5 business days, and provides conforming updates to the Company Event Notification Form. Nasdaq believes that this will align Nasdaq's rules with the requirements of Rule 10b-17 under the Act, and will thereby help promote clarity, transparency and consistency for market participants and companies. Nasdaq also believes that the delayed operative date of the proposed rule change is consistent with Section 6(b)(5) of the Act in that it will allow sufficient time for market participants to adjust to the new time frame and will thereby help to reduce potential confusion for companies and investors.

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 change is designed to align an existing rule and related Company Event Notification Form with the requirements of Rule 10b-17 of the Act and, therefore, Nasdaq believes that the proposed change will not impose a burden on competition.

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 Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.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 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-068 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.

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 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.

All submissions should refer to file number SR-NASDAQ-2024-068. 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-2024-068 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.¹⁵

Sherry R. Haywood,
Assistant Secretary.

¹⁵ 17 CFR 200.30-3(a)(12).