

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96592; File No. SR-NASDAQ-2022-080)

December 29, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Implementation Date for Certain Risk Checks of Rule Nasdaq Equity 6, Section 5 Risk Settings that Provide Participants with Additional Optional Settings

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 December 20, 2022, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“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 extend the implementation date for certain risk checks of Rule Nasdaq Equity 6, Section 5 (Risk Settings) that provide Participants with additional optional settings.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

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

1. Purpose

Nasdaq is filing this proposal to extend the implementation date of Rule Nasdaq Equity 6, Section 5 (Risk Settings) that provide Participants with additional optional settings to Q1 2023; and to make certain technical modification without changing the substance of the rules.

Nasdaq proposed rule changes under Rule Nasdaq Equity 6, Section 5 (Risk Settings) to provide Participants³ with additional optional settings to assist them in their efforts to manage risk on their order flow. These additional settings provide participants with extra oversight and controls on orders coming into the exchange. Once the optional risk controls are set, the

³ Pursuant to Rule Nasdaq Equity 1, Section 1(a)(5), a “Participant” is defined as an entity that fulfills the obligations contained in Equity 2, Section 3 regarding participation in the System, and shall include: (1) "Nasdaq ECNs," members that meet all of the requirements of Equity 2, Section 14, and that participates in the System with respect to one or more System Securities; (2) "Nasdaq Market Makers" or "Market Makers", members that are registered as Nasdaq Market Makers for purposes of participation in the System on a fully automated basis with respect to one or more System securities; and (3) "Order Entry Firms," members that are registered as Order Entry Firms for purposes of entering orders in System Securities into the System. This term shall also include any Electronic Communications Network or Alternative Trading System (as such terms are defined in Regulation NMS) that fails to meet all the requirements of Equity 2, Section 14.

Exchange is authorized to take automated action if a designated risk level for a Participant is exceeded. Such risk settings would provide Participants with enhanced abilities to manage their risk with respect to orders on the Exchange. All proposed risk settings are optional for Participants and afford flexibility to Participants to select their own risk tolerance levels. These changes were filed by Nasdaq on August 8, 2022, and published in the Federal Register on August 18, 2022.⁴

Nasdaq indicated that it intends to implement the proposed rule changes on or before December 30, 2022. Due to re-prioritization, Nasdaq is delaying the implementation of the additional, optional risk checks, as described in the Proposal, until March 31, 2023. The Exchange will issue an Equity Trader Alert to members announcing the exact date the Exchange will implement the risk protections.

Nasdaq also proposes to modify the risk setting titled “Restricted Stock List.” As described in the Proposal, this control allows a Participant to restrict the types of securities transacted by setting a list of symbols for which orders cannot be entered. This control also allows Participants to set an easy to borrow list, which is a list of symbols for which short sale orders may be entered. Short sale orders for symbols not on the easy to borrow list will not be accepted; however, Participants will have an option to indicate that short sales orders are permitted for all symbols.

Nasdaq proposes to modify this risk check to such that a Participant can set a hard to borrow list, which is a list of symbols for which short sale orders may not be entered, rather than an easy to borrow list. Short sale orders for symbols not on the hard to borrow list will be

⁴ See Securities Exchange Act Release No. 95495 (August 12, 2022), 86 FR 24685 (August 18, 2022) (SR-NASDAQ-2022-047) (the “Proposal”).

accepted; however, Participants will have an option to indicate that short sales orders are permitted for all symbols by not maintaining a hard to borrow list. Nasdaq believes that this modification does not substantively change the Restricted Stock List risk setting. This setting continues to be similar to Interpretations and Policies .01(d) of BZX Rule 11.13.⁵

Nasdaq also proposes to modify Market Impact Check and Gross Exposure Check to correct typographical errors and clarify the rule language without substantively changing it.

Implementation

As stated above, the Exchange intends to implement the proposed rule changes on or before March 31, 2023. The Exchange will issue an Equity Trader Alert to members announcing the exact date the Exchange will implement the risk protections.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ 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 purpose of this proposal is to modify the timing of the planned implementation for the optional risk checks, described above, and to inform the SEC and market participants of that change. The introduction of the optional additional risk checks was proposed in a rule filing that was submitted to the SEC, and the Exchange is now modifying the implementation date for this

⁵ See Securities Exchange Act Release No. 80611 (May 5, 2017) 82 FR 22045 (May 11, 2017) (SR-BatsBZX-2017-24).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

product. Nasdaq is delaying the implementation date in order to complete testing in line with Nasdaq's re-prioritized product pipeline.

Nasdaq believes that the proposed changes to modify the risk setting titled "Restricted Stock List" is a technical modification that does not change the substance of this rule. Similarly, Nasdaq believes that the proposal to modify Market Impact Check and Gross Exposure Check to correct typographical errors and clarify the rule language without substantively changing it is ministerial.

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. As explained above, the purpose of this proposal is to modify the timing of the planned implementation for the optional additional risk checks and to inform the SEC and market participants of that change. The existing Nasdaq products will continue to be available, and the implementation delay will impact all market participants equally. The Exchange does not expect the date change to place any burden on competition. Similarly, Nasdaq believes that correction of typographical errors, technical changes, and clarifications of existing rules do not place any burden on competition because these changes do not affect the substance of the existing rules.

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 Act⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁹

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2022-080 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.

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 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-2022-080. 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-2022-080 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.¹⁰

J. Matthew DeLesDernier,
Deputy Secretary.

¹⁰ 17 CFR 200.30-3(a)(12).